

IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 21.09.2020

PRONOUNCED ON : 29.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.17745 of 2013

and

M.P.No.1 of 2013

M/s.R.S.Graphics,
59/4d, MRC Garden Road,
Madurvedu, Velappanchawadi,
Chennai-600 077
rep. by its Managing Partner
V.B.Sridharan

... Petitioner

Vs.

The Revisionary Authority
And Joint Secretary to the
Govt. of India, Ministry of Finance,
Department of Revenue,
14, Hudco Vishala Building,
B Wing 6th Floor, Bhikaji,
Cama Place, New Delhi-110 066.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records connected with Order No.58/2013-Cus dated 13.02.2013, passed by the respondent herein and to quash the same insofar as it confirms the penalty imposed under Section 114(iii) of the Customs Act on the petitioner herein.

For Petitioner : Mr.N.Viswanathan

For Respondent :Mr.Rajasekar

O R D E R

With the consent of both parties, the present Writ Petition is taken up and heard through Video Conferencing on 21.09.2020.

2. The brief facts of the case are as follows:-

(i) The petitioner had filed six Shipping Bills dated 02.09.2011 under Drawback Schemes for the export of 28420.20 kgs of 'tissue paper in sheet form' under Drawback Serial No.40030010 and claimed 7.2% of drawback to the tune of Rs.1,27,891/-. The classification in Serial No.40030010 is for 'tissue paper in roll form', whereas classification for 'tissue paper in sheet form' is under Serial No.48030099, for which, the drawback is at the rate of 1%. Thus, instead of claiming the drawback at 1% which works out to Rs.44,689/-, the petitioner claimed drawback of Rs.1,27,891/-. The misclassification was noticed by the Customs and further investigated by the SIIB. On the request of the petitioner and upon recording the statements of the concerned personnel of the CHA, export clearance was granted.

(ii) Through an Order-in-Original dated 22.03.2012, passed by the Additional Commissioner of Customs, Tuticorin, the impugned goods were confiscated under Section 113 of the Customs Act, 1962 on the ground of miscalculation on the entry number on the Drawback Schedule, with an option to redeem the same on payment of a redemption fine of Rs.75,000/- under Section 125 of the Customs Act. A penalty of Rs.80,000/- was also imposed under Section 114(iii) of the Customs Act (hereinafter referred to as the 'Act').

(iii) On appeal, the Commissioner of Customs and Central Excise (Appeals), placed reliance on a judgment of the Hon'ble Supreme Court in the case of Commissioner of Customs Vs. Finesse Corporation Inc., reported in 2010 (255) E.L.T. A120 (SC) and held that since the consignment has already been exported and not available for confiscation or redemption, the confiscation order and optional redemption is unsustainable and accordingly, the confiscation and the option of redemption, were set aside. However, the Appellate Authority had found that the petitioner had mis-declared the drawback in serial number 40030010, with an intention to claim ineligible drawback amount and therefore, confirmed the penalty imposed under Section 114(iii) of the Customs Act. The imposition of the penalty in the Order-In-Appeal No.35 of 2012 dated 31.07.2012 was challenged by way of a revision under Section 129 (DD) of the Act, which was dismissed on 13.02.2013. The rejection orders are under challenge in the present Writ Petition.

3. Heard Mr.N.Viswanathan, learned counsel for the petitioner and Mr.Rajasekar, learned counsel appearing on behalf of the respondent.

4. It is not in dispute that the petitioner had originally declared the goods under Serial No.40030010 in 'tissue paper in roll form' and claimed 7.2% of drawback. Subsequently, they had rectified the drawback to Serial No.48030099, which is for 'tissue in sheet form'. It is the contention of the learned counsel for the petitioner that they had no intention to miscalculate or mis-classify the goods and the wrong quoting of the DBK code was only by inadvertence, which was subsequently rectified when it was brought to their notice and therefore, the penalty should not have been levied.

5. I am unable to accept such a contention. Section 114 of the Customs Act provides for imposition of penalty on any person who attempts to export goods improperly, which would be liable for confiscation under Section 113 of the Act. When the petitioner himself admits that they had quoted wrong DBK code at the time of export, the consequence of which would entitle them to claim 7.2% of drawback, such an act can be termed to be an attempt to export goods, which would be liable for confiscation.

6. Pursuant to the rectification, the goods came to be exported and the petitioner also admitted that he had wrongly quoted the DBK Code as Serial No.40030010 instead of Serial No.48030099. Such a wrong-quoting can only be termed as 'misclassification'. Since the consequence of such miscalculation may entitle him to claim 7.2% of drawback, as against his entitlement of 1%, it would amount to an attempt on their part to export the goods improperly and therefore, the imposition of penalty under Section 114 of the Act, cannot be found fault with.

7. The learned counsel also made a faint attempt by submitting that since the goods were allowed for clearance by the Assistant Commissioner of Customs, it would amount to acceptance of the wrong quoting of the DBK Code and therefore the orders of the Original Authority ought to have been reviewed under Section 129(D) of the Act. In support of such contention, he placed reliance on the decision of the CEGAT reported in 1987 (31) E.L.T. 400 (Tribunal) in the case of Decor India and others V. Collector of Customs, New Delhi, which decision of the Tribunal came to be confirmed by the Hon'ble Supreme Court in 1994 (94) E.L.T.A 51 (SC). The submission of the learned counsel for the petitioner seems to be misplaced.

8. In the Order-in-Appeal No.35 of 2012 dated 31.07.2012, the order of confiscation and the option to redeem, were set aside, by placing reliance on the decision of the Hon'ble Apex Court in Finesse Corporation Inc's case (supra) and the penalty under Section 114 (iii) of the Act was confirmed. As against this, it was the petitioner, who had preferred the Revision

under Section 129(DD) of the Act, which came to be dismissed on 13.04.2013. The power to revise is a statutory power of the Central Government, to revise any order passed under Section 128A, where the order is of the nature referred to, in the proviso to Section 129A, which deals with payment of duty drawback. When the revision, filed at the instance of the petitioner, was rejected, there is no basis for the petitioner to claim that the orders of the Statutory Authorities ought to have been revived under Section 129D of the Act.

9. The decision in Decor India's case (supra) of the Tribunal as confirmed by the Hon'ble Supreme Court, does not deal with the situation involved in the present case. In the Decor India's case (supra), the factual contention was that on the release of the goods under Section 47 of the Customs Act, if the Department was aggrieved, the option that would have been available is to file an appeal before the Commissioner of Customs under Section 128 of the Act and that the Department has no right to reopen the case. This contention was accepted by the Tribunal by holding that the Collector of Customs was not justified in not invoking the revisional powers under Section 129D (1) & (2) of the Act and issue a show cause notice, as if he was an Original Adjudicating Authority. Such a factual position is not the case here and therefore, the decision of the Tribunal as confirmed by the Hon'ble Supreme Court is distinguishable.

10. As already stated, when the petitioner had admitted of having wrongly quoted the DBK code for the goods and thereafter rectified it itself would amount to misclassification and thereby attempted to export the goods improperly. A mere plea of 'inadvertence' may not absolve the petitioner and grant them immunity from penalty. The discretion of levying penalty is always available with the Statutory Authority under Section 114, whenever such an Authority is of the view that an attempt to export the goods are in such a nature that the goods would be liable to be confiscated under Section 113. Since the Original Authority was of the opinion that the petitioner attempted to export the goods through misclassification, this Court is of the view that the Authority was justified in levying the penalty.

11. The confiscation order, with an option to redeem on payment of redemption fine, was set aside by the Appellate Authority only on the ground that the goods, since already exported, were not available for confiscation and therefore, the confiscation order is bad in law. It was not the finding of the Appellate Authority that the petitioner had not attempted to export the goods improperly. Hence, a mere setting aside of the confiscation order and the option of redemption, will not entitle the petitioner to escape his liability from penalty.

12. For all the foregoing reasons, I do not find any merits in the present Writ Petition. Accordingly, the Writ Petition stands dismissed. Consequently connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

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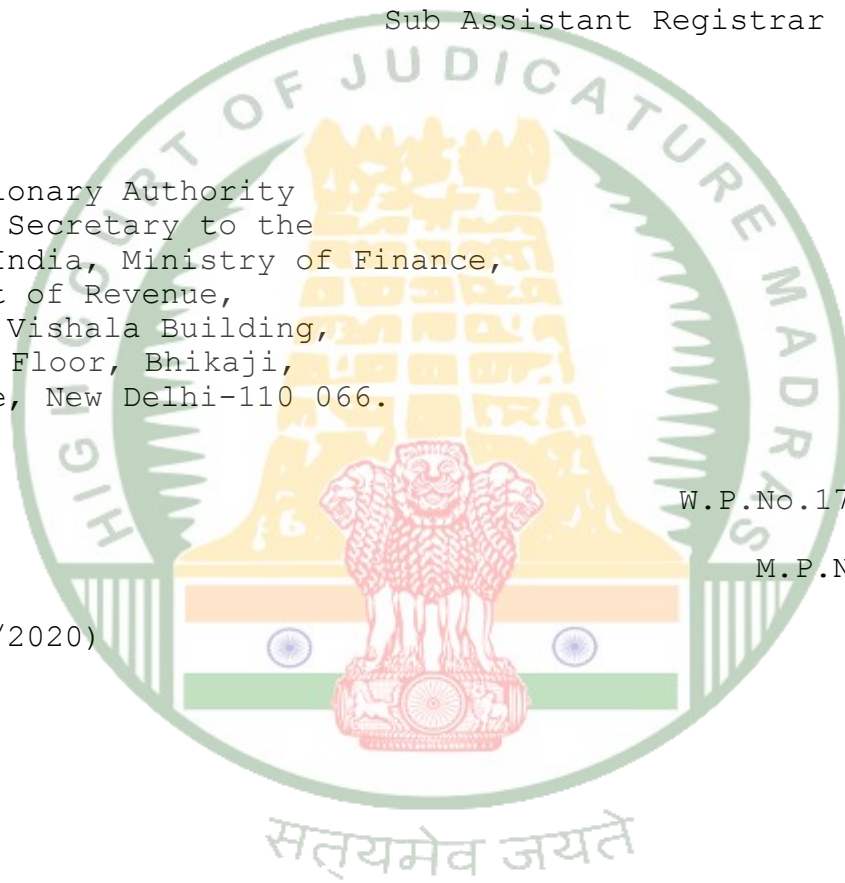
Sub Assistant Registrar

DP

To
The Revisionary Authority
And Joint Secretary to the
Govt. of India, Ministry of Finance,
Department of Revenue,
14, Hudco Vishala Building,
B Wing 6th Floor, Bhikaji,
Cama Place, New Delhi-110 066.

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SSI (CO)
RMP (03/12/2020)



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