

2013 (298) E.L.T. 193 (Bom.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
J.P. Devadhar and A.R. Joshi, JJ.

COMMISSIONER OF CENTRAL EXCISE, THANE-II

Versus

BEE INTERNATIONAL

Central Excise Appeal No. 266 of 2006, decided on 22-3-2012

EXIM - Export obligation non-fulfilment - Demand is sustainable without grant of option of re-warehousing or re-exporting un-utilised raw materials - It is more so where importer did not seek either such option or extension of bond period. [para 4]

Appeal allowed

REPRESENTED BY : S/Shri Pradeep S. Jetly with S.D. Bhosale, for the Appellant.
Shri Umesh R. Phalorh, Chief Financial Officer, for the Respondent.

[Judgment per : J.P. Devadhar, J. (Oral)]. - Heard Mr. Jetly, learned counsel for the Revenue and Mr. Umesh R. Phalorh, Chief Financial Officer of the respondent in person.

2. This appeal was admitted on 18-10-2006 on the following questions of law :-

- (a) Whether the CESTAT was correct in law in holding that the customs duty demanded along with interest on raw material procured without payment of duty cannot be held without mentioning any legal provision in support thereof when, the duty and interest were demanded and held to be recoverable for contravention of the terms and conditions of the bonds executed in terms of Notification Nos. 13/81-Cus., dated 9-2-1981 and 53/97-Cus., dated 3-6-1997?
- (b) Whether the CESTAT was correct in law in holding that the Central Excise duty on indigenous raw material procured without payment of duty cannot be demanded for contravention of provisions of Rule 173P of the erstwhile Central Excise Rules, 1944 as the said provisions were part of Chapter VIIA of the erstwhile Central Excise Rules, 1944 which were not applicable to 100% EOU when, the said Rules was invoked along with Rule 196 which was applicable and the demand was confirmed in terms of Notification Nos. 123/81-C.E., dated 2-6-1981, 57/94-Cus., dated 1-3-1994, the Condition No. (d) of Notification No. 1/95-C.E., dated 1-4-1995?
- (c) Whether the CESTAT was correct in holding that no penalty is imposable under Section 112(a) of the Customs Act, 1962 as the demand is not upheld and no liability under Section 111 for confiscation has been arrived when, the goods were liable for confiscation in terms of para 6 of Chapter 25 (offences and penalties) of C.B.E. & C.'s Manual as, there was fraudulent intention to avail the benefit of 100% EOU?
- (d) Whether the CESTAT was correct in law in holding that no penalty can be imposed under Rule 173Q and Rule 209A of the erstwhile Central Excise Rules, 1944 when, along with the said Rules the provisions of Rules 25 and 26 of the Central Excise Rules, 2002 were also invoked?

3. The respondent-assessee, a 100% Export Oriented Unit (EOU) failed to fulfil the export obligation even after importing duty free import of raw materials to the tune of Rs. 3.94 crore. As a result of not fulfilling the export obligation, proceeding was initiated and by an order dated 17-2-2004, the entire duty demand with interest was confirmed and penalty was also imposed.

4. Challenging the Order-in-Original dated 17-2-2004, the assessee filed an appeal and the Tribunal by its impugned order dated 27-5-2005 [2007 (220) E.L.T. 128 (Tri.-Mumbai)] set aside the Order-in-Original on the ground that without granting the option of re-warehousing or re-exporting the unutilised raw materials, the demand for duty and interest cannot be upheld. The Tribunal further held that the extension of the Bonding period could be granted even after the expiry of the bond period in appropriate cases and accordingly, granted extension of the bond period to the assessee. It is not in dispute that in the present case, the respondent-assessee had neither sought re-warehousing of the goods nor sought extension of the bond period. In these circumstances, both the parties agree that the impugned order of CESTAT dated 27-5-2005 be quashed and set aside and the matter be restored to the file of CESTAT for *de novo* consideration in accordance with law.

5. Accordingly, the impugned order dated 27-5-2005 is quashed and set aside and the matter is restored to the file of the Tribunal for considering the grounds on which the assessee has challenged the Order-in-Original dated 17-2-2004.

6. The appeal is accordingly allowed with no order as to costs.