

TaxHelpline Case No. 197 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

Customs Appeal No.C-148 of 2012, decided on 11th March, 2013. Date of hearing: 6th March, 2013

Before Ch, Muhammad Asghar Paswal, Member Judicial

Muhammad Imran for Appellant. Muhammad Ismail D.R. with Asif Hussain Inspector for Respondents

Messrs AL-AZIZ ROTOFLEX (PVT.) LTD

Vs

**ADDITIONAL COLLECTOR OF CUSTOMS (ADJUDICATION)
MODEL CUSTOMS COLLECTORATE**

JUDGMENT

CH. MUHAMMAD ASGHAR PASWAL (MEMBER JUDICIAL).--This appeal is directed against Order-in-Original 15 of 2012 dated 11-7-2012 passed by Additional Collector of Customs (Adjudication) Faisalabad.

2. Brief facts of the case as reported to the undersigned by the Superintendent (DTRE), Customs Dryport, Faisalabad are that in pursuance of instructions contained in para (ii) of Board's letter dated 30-3-2012 in connection with verification of the stocks imported, exported and lying un-exported/unconsumed pertaining to DTRE approval No.FSD/3548/01042010 dated 28-04-2010. At the time of physical verification the following documents relating to imported input goods against aforesaid DTRE approval were provided by the representative of DTRE user.

During physical examination of imported input goods it was observed that:--

- (i) The goods were lying in open area covered with tarpaulin in scattered position and in un-countable manner.
- (ii) The rolls of BOPP were of different thickness, widths and lengths.
- (iii) The stickers pasted on BOPP rolls show that the same are manufactured by Tri pack instead of imported one.
- (iv) As per Goods declaration the DTRE user imported BOPP Film having 38 micron with Brand name TEGHLEEF INDUSTRIES L.L.C. whereas the goods in hand with DTRE user are of different Microns i.e. 38, 20 and 12 as per stickers pasted on rolls and locally manufactured.
- (v) A few stickers were retrieved from the BOPP rolls which are placed in the file for kind perusal which show that the origin is Tri-Pack and fresh BOPP rolls are purchased locally during the current calendar year.

It is evident from the above facts that goods lying in the factory premises are other than those which were imported in the year 2010 as per detail given in above table. In this way, the DTRE user tried to misappropriate/defraud the department by way of manipulating the locally manufactured goods to match with the imported input goods under DTRE scheme. It is further added that the DTRE user made a representation dated 26-3-2012 before the Board that the imported goods could not be re-exported due to some technical trail issues and requested to that extension for re-export be granted to them. In this way the DTRE user made a false declaration as the imported goods were not in hand with them as observed during the process of physical verification. Such act of DTRE user regarding submission of incorrect request made to the Board attracts violation of section 32 of the Customs Act, 1969. Therefore, it is recommended that appropriate legal action may also be taken against the DTRE user.

It has further observed that Messrs Tariq Rashid and Co. Faisalabad representative of Messrs Al-Aziz Rotoflex (Pvt.) Ltd, Faisalabad submitted in writing vide letter dated 21-4-2012 that "they have no past performance of export under DIRE approval dated 28-4-2010. Therefore, the same may be treated as NIL"

Computerized data of Weboc dated 24-5-2012 also shows that Messrs Al-Aziz Rotoflex Faisalabad had imported 23381.3 Kgs. Of White Label BOPP Film without payment of duty and taxes for use in the manufacturing of BOPP film printed and export thereof of 40000 Kgs falling under PCT Heading 3920.2020 for the purpose of export whereas the DTRE user failed to export even a single Kg. of BOPP film printed against the subject DTRE approval within prescribed time limit under DTRE Rule 305 of S.R.O. 450(I)/2001 dated 18-06-2001. Hence the Customs duty amounting to Rs.951537 Sales Tax Rs.1198936 GST Rs.23979 Withholding tax Rs.276326 and Special Excise Duty Rs.47577 including additional duty or additional taxes are recoverable under DTRE Rule 307-A notified vide S.R.O. 450(I)/2001 dated 18-6-2001 read with section 83 of Customs Act, 1969 from the DIRE user.

In view of above, Messrs Al-Aziz Rotoflexd, Faisalabad were called upon to show cause as to why duty and taxes amounting to Rs.24,98355 including additional duties, additional taxes, penalties and surcharges may not be recovered from them under DIRE Rule 3-7A(I) 307G(2) of S.R.O. 450(I)/2001 dated 18-6-2001 section 202 of Customs Act, 1969 read with section 83 ibid, section 6 of Sales Tax Act, 1990 and section 148 of Income Tax Ordinance, 2001 and section 14 of Federal Excise Act, 2005 for violation of Section 32 of the Customs Act, 1969 read with DTRE Rules notified vide S.R.O. 450(I)/2001 dated 18-6-2001 read with section 21 of Customs Act, 1969, punishable under clause 11 of section 156(1) of the Customs Act, 1969. The Additional Collector (Adjudication) ordered to deposit Government duty/ taxes along with additional duty and taxes as well as suitable penalty may also be imposed for violation of the Customs Rules and regulations. Aggrieved by the said order the appellant filed the present appeal before this Tribunal on the following grounds:--

(I) That the order passed by the Additional Collector (DTRE) is bad in law and against the facts of the case.

(II) That the appellants have not violated any provisions of DTRE Rules 307A and 307G of S.R.O. No.450(I)/2001 dated 18-6-2001.

(III) That the impugned show cause notice and the order-in-original is defective and based on presumptions without any solid reasons and without considering the reply filed by the appellant, thus the same is illegal and unwarranted.

(IV) That the show case notice as well as order-in-original is beyond the scope of DTRE as the appellant has exported the goods.

3. On the other side the learned Departmental Representative and Mr. Asif Hussain Inspector opposed the arguments advanced by the learned counsel for the appellant and stated that the Order-in-Original is in accordance with law and facts on the record therefore, it calls for no interference.

4. I have heard learned counsel for the appellant as well as learned Departmental Representative and Asif Hussain Inspector for the respondent and perused the record. I find that there is no doubt that appellant purchased local BOPP films from Tri pack in huge quantity to be consumed for local sale. The samples obtained by the auditing team were not obtain as per law as neither signed by the appellant nor one signed copy provided to the appellant even the so called auditing team did not considered the appellant version during the visit that material imported under DTRE is under production and most of it was ready for export. The record revealed that auditing team collect the stickers of irrelevant material (local materials of Tri Packs) just to create a fictitious demand against the appellant. Further there is no loss of revenue to the National Exchequers from the delayed export made by the appellant which was even beyond his control. The higher courts in number of cases have already held that benefits cannot be denied mere on technicalities. Reference in this regard is given in a judgment of the Honorable Supreme Court

of Pakistan reported as 2012 SCMR 1526 their lordships have held that:--

"Remedy of specific performance of a contract being equitable in nature cannot be granted to enforce a truncation declared void by a statute."

The honorable High Court Lahore also in case reported as (1976) 34 Tax 54 (High Court Lahore) while deciding the issues as under:--

"We may observe as a matter of principle, all that the courts of law are required to examine while considering a document or an instrument is the intention and not merely the form of any order or direction contained therein depending upon the facts, circumstances and the context of each case".

5. In view of the above, there is no force in the arguments advanced by the learned Departmental representative, so the appeal is hereby accepted and the impugned Order-in-Original No. 15 dated 11-7-2012 is set aside. Parties be informed through registered post A.D. or by UMS.

6. File be consigned to the record after completion.

Appeal accepted

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