

2013 (4) ECS (177) (Tri – Del)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO. 2 R. K. PURAM, NEW DELHI - 110066**

Date of Hearing : 26/08/2013

M/s Khatema Fibres Ltd.

Vs.

CCE, Meerut - II

APPEAL No. C/608/2011 – CU [SM]

[Arising out of Order – in – Appeal No. 06 – Cus/MRT-II/2010, dated 31.05.2011 passed by the C.C.E. (Appeals), Meerut - II]

Appearance

Shri Ranjan Kumar, Advocate - for the Appellant
Shri G. Dixit, DR - for the Respondent

CORAM

Hon'ble Mr. Sahab Singh, Member (Technical)

FINAL Order No. 57472 dated 26.08.2013

“As regards the submissions of the appellants that the appellant’s unit is under BIFR proceedings are not applicable to the seizure and confiscation for violation of the provisions of the Customs Act” [Para 4]

Per Sahab Singh, Mr. :

1. This appeal has been filed by M/s. Khatema Fibres Ltd. (hereinafter referred to as appellants), against the order in appeal No. 06 – Cus/MRT –II/2010 dated 31.05.2011. In this case, the Addl. Commissioner (Customs), Lucknow has seized the consignment of waste paper valued at Rs. 8,500/- brought by the appellant, M/s. Khatema Fibres Ltd. from Nepal along with truck. On adjudication of the case, the waste paper was confiscated by the original authority but an option to redeem it on payment of fine of Rs. 5,000/- was given. The truck No. UP – 21 – N – 6270 valued at Rs. 6,20,000/- was also confiscated with option to

redeem the truck on payment of Rs. 1,00,000/- and penalty of Rs. 1,000/- each was imposed on the appellants, Shri Nem Singh Yadav and Shri Mohan Singh. The appellants have challenged the order before the Commissioner (Appeals), who vide impugned order has rejected the appeal.

2. Shri Ranjan Kumar, Ld. Advocate for the appellant submits that in the present case they have already deposited the penalty imposed on the appellant, Shri Nem Singh Yadav and Shri Mohan Singh and in respect of waste paper, instead of redemption fine of Rs.5,000/- they have already deposited Rs. 8,500/- on 16.03.2010, during the course of investigation. However, they have not paid the redemption fine of Rs. 1,00,000/- in respect of truck No. UP – 21 – N – 6270 and are seeking relief in the present appeal. Ld. Advocate mainly relied on the fact that their company, M/s. Khatema Fibres Ltd. is under Board for Industrial and Financial Reconstruction (BIFR) proceedings and has been declared sick by the BIFR and therefore they are not in a position to make any payment and also relied on the decision of Andhra Cements Ltd. vs. CCE & ST, Guntur, wherein the relief was given to the petitioner on the ground of BIFR proceedings.
3. The Ld. Departmental Representative submits that the present case pertains to seizure of contraband goods; paper waste brought in the impugned truck, which was also seized and confiscated under Section 115 of the Customs Act, 1962. The relief sought for on account of BIFR proceedings is not applicable in the case of seizure of contraband goods. He, therefore, submits that there is no case for any concession in the present case.
4. After hearing both the sides, I find that there is no dispute on the fact that the paper waste of Chinese origin was brought into India from Nepal in the impugned truck by the appellants. Shri Nem Singh Yadav in his statement dated 26.02.2010 had admitted that he brought paper waste on the directions of Mr. Mohan Singh, in – charge of the appellants. After considering the statements of Shri Nem Singh Yadav and Shri Mohan Singh and also the submissions made by the appellants before the original authority, the Additional Commissioner has confiscated the paper waste of Chinese origin treating it as illegally imported into India from Nepal in violation of Notification No. 9/96 – Cus (NT), dated 22.01.1996 and allowed the same on payment of redemption fine of Rs.5,000/-. Since the said paper waste was brought in the impugned truck, confiscation of the truck was also ordered by the original authority and both the confiscations were upheld by the Ld. Commissioner (Appeals). In view of these facts of the case, I also uphold the order of the Commissioner (Appeals) in respect of the confiscation and confirmation of fine and penalty against the appellants. As regards the submissions of the appellants that the appellant's unit is under BIFR proceedings are not applicable to the seizure and confiscation for violation of the provisions of the Customs Act. Moreover, the appellants have already deposited

fine in respect of paper waste and the penalties imposed in the present case. In respect of the truck which was already released provisionally to the appellant and they are using the same for their business purpose, I do not find any reason to reduce the redemption fine of Rs. 1,00,000/- and I confirm the same. Accordingly, the appeal is rejected.

(Pronounced & Dictated in Open Court)