

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH, ALLAHABAD
COURT NO. I**

Customs Appeal No.70020 of 2016-Division Bench

Arising out of Order-in-Appeal No. NOI-EXCUS-002-APP-0098-15-16, Dated: 30.09.2015
Passed by Commissioner (Appeals) Central Excise & Customs, Noida

**Date of Hearing: 23.05.2019
Date of Decision: 23.05.2019**

**M/s G T CARGO FITTING INDIA PVT LTD
(PLOT NO.92, UDYOG KENDRA, GREATER NOIDA)**

Vs

**COMMISSIONER OF CENTRAL EXCISE
NOIDA-II, (HOTEL FORMULE-I, WEGMANS BUSINESS PARK
KP-III, GREATER NOIDA)**

Appellant Rep by: Shri Jitendra Singh, Adv.

Respondent Rep by: Shri Pawan Kumar Singh, AR

CORAM: Archana Wadhwa, Member (J)
Anil G Shakkarwar, Member (T)

Cus - The assessee-company is a 100% EoU which exports final products as per Notfn No 52/2003-Cus - It is entitled to import duty-free raw material required to be further used in the manufacture of exported articles - Such Notfn permits clearance of part manufactured goods to DTA with the permission of the Development Commissioner - As per the conditions in the notfn, the importer must obtain authorization from the Development Commissioner to establish unit for export purposes - The assessee imported Polyester webbings fabric buckles for manufacturing ratchet lashing system - The latter goods were exported and part of the same were cleared to DTA unit with due permission of the Development Commissioner - The Revenue sought to deny benefit of Notfn on grounds that as per the LOP, the permission was granted only to parts used in motor vehicles - As the latching system cannot be considered part of motor vehicle, the condition of Notfn regarding authorization by Development Commissioner was unsatisfied - SCN was issued proposing duty demand & the same was confirmed upon adjudication.

Held - Considering the letter issued by the Development Commissioner, it is seen that it is not a fresh LOP issued by the Development Commissioner & it is to the effect that the item lashing belts system stands included in the earlier LOP which is modified to such extent - Since it is a modification of earlier LOP, the same must be treated as a clarificatory amendment by the Development Commissioner - This would effectively over-rule the Revenue's objections - Moreover, the issue at hand involves *bona fide* interpretation of provisions of Notfn - Without there being any evidence of *mala fide* intent on part of the assessee, extended limitation is not invocable - Hence the O-i-A merits being quashed:
CESTAT

Assessee's appeal allowed

FINAL ORDER NO. 71098/2019

Per: Archana Wadhwa:

The short dispute is involved in the present appeal. The appellant is a 100% EOU engaged in the export of their final product in terms of Notification No.52/2003-cus. They are entitled to import duty free raw material, which is required to be further used in the manufacture of exported articles. The said Notification also allows clearance of a part manufactured goods to DTA with the permission of Development Commissioner. As per the condition of the Notification, the importer has to obtain the authorization by the Development Commissioner to establish the unit for the purpose of export.

2. The appellant imported polyester webbings fabric buckles for manufacture of ratchet lashing system, which is primarily used for holding the vehicles during the course of mass transportation of the same. The said goods were being exported by the appellant and part of the same was also being cleared to DTA unit, with due permission of the Development Commissioner.

3. Revenue sought to deny the benefit of the Notification in question on the sole ground that as per the letter of permission (hereinafter referred as LOP) granted by the Development Commissioner, the permission stands granted only to parts used in motor vehicles. Inasmuch as the latching system cannot be considered to be a part of the motor vehicle, the condition of the Notification as regards authorization by the Development Commissioner does not stand satisfied. Accordingly proceedings were initiated against them by issuance of a show cause notice dated 05/07/2013 raising demand of duty of Rs.6,60,186/-. The same stands confirmed by the order of the Authorities below.

4. It is seen that during the course of adjudication the appellant approached their Development Commissioner, who amended the earlier LOP by including the item namely "lashing belt system" and modified the earlier existing LOP dated 27/09/2000 vide his communication dated 09/05/2011. The Lower Authorities have not accepted such modification on the ground that the same stands modified with effect from 09/05/2011 and as such cannot be held to be available and applicable during the period prior to the said date.

5. On going through the said letter dated 09/05/2011 we note that the same is not a fresh LOP issued by the Development Commissioner and the same is to the effect that the item lashing belts system stands included in the earlier LOP dated 27/09/2000 which is modified to that extent. Inasmuch as it is a modification of the earlier LOP, we are of the view that the same has to be held as a clarificatory amendment by the Development Commissioner in which case the Revenue's objection would get over ruled.

6. Otherwise also, we find that the proceeding stands initiated against the appellant by invoking longer period of limitation. Inasmuch as the issue is a bona fide issue of interpretation of provisions of the Notification, in the absence of contrary evidence reflecting upon any mala fide on the part of the appellant, we are of the view that extended period was not available to the Revenue. As such, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in open court)