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Gujarat High Court Ruled that the DEPB license was valid at the time of import



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The Gujarat High Court recently delivered a significant judgment in the case of *Commissioner of Customs vs. Binani Cement Ltd.*, shedding light on the interplay between fraud, customs duty liability, and the extended period of limitation under Section 28 of the Customs Act, 1962. This case serves as an important precedent for importers, exporters, and legal professionals navigating the complexities of customs law.

Case Background

The dispute arose when M/s Beni Exports obtained a Duty Entitlement Pass Book (DEPB) license in 2000, valued at Rs. 94,56,252/-. Investigations revealed that the license was fraudulently obtained by manipulating export documents. Consequently, the Director General of Foreign Trade (DGFT) canceled the license on October 24, 2001. However, before the cancellation, M/s Beni Exports had transferred the license to Binani Cement Ltd., which used it to import goods exempted from customs duty under Notification No. 34/97-Cus dated April 7, 1997.

The Commissioner of Customs argued that since the license was invalidated due to fraud, the imports made using the license were liable for customs duty. The department sought to recover the duty by invoking the extended limitation period under Section 28 of the Customs Act, which allows recovery within five years in cases involving collusion, willful misstatement, or suppression of facts.

Key Legal Questions

The appeal raised two critical questions of law:

1. Whether the Tribunal was justified in confirming the Commissioner (Appeals)' decision to set aside the demand for duty, given the alleged fraud committed by the exporter.
2. Whether the Tribunal was correct in holding that the Revenue could not recover customs duty despite the fraud committed by the exporter.

Court's Observations

The High Court examined the facts and legal arguments presented by the Commissioner of Customs. It noted the following:

- At the time of import, the DEPB license was valid, and there was no misrepresentation or suppression of facts by Binani Cement Ltd., the importer.
- The fraud was committed by the exporter, M/s Beni Exports, and not the importer. The Revenue failed to establish any collusion or willful misstatement on the part of Binani Cement Ltd.
- The extended limitation period under Section 28 of the Customs Act could not be invoked against the importer, as the conditions for its application—collusion, willful misstatement, or suppression of facts—were not met.

Judgment

The High Court upheld the decisions of the Commissioner (Appeals) and the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT). It concluded that the demand for customs duty was barred by limitation and dismissed the appeal, stating that no substantial question of law arose from the case.

Implications of the Judgment

This judgment has far-reaching implications for importers and exporters:

1. Protection for Innocent Importers: Importers who act in good faith and rely on valid licenses at the time of import are protected from liability arising due to subsequent cancellation of the license.
2. Burden of Proof on Revenue: The Revenue must establish collusion, willful misstatement, or suppression of facts to invoke the extended limitation period under Section 28 of the Customs Act.
3. Fraud by Exporters: While fraud vitiates every act, the liability for customs duty cannot be shifted to the importer if the fraud was committed solely by the exporter.

Conclusion

The Gujarat High Court's judgment in *Commissioner of Customs vs. Binani Cement Ltd.* reinforces the principle that liability under customs law must be based on clear evidence of wrongdoing by the party against whom the demand is made. It underscores the importance of due diligence in trade transactions and provides clarity on the application of the extended limitation period under Section 28 of the Customs Act.

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1592 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF CUSTOMS

Versus

BINANI CEMENT LTD.

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Appearance :

MR HARIN P RAVAL for the Appellant

None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

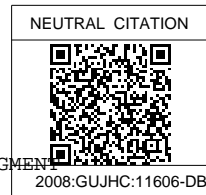
and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 10/07/2008

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)



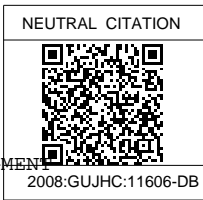
1. Commissioner of Customs, Kandla, Gandhidham has preferred this appeal by proposing following two questions stated to be questions of law.

[a] Whether in the facts and circumstances of the case, Tribunal is justified in confirming the decision of the Commissioner [Appeals], who set aside the demand of duty on the ground that the Revenue had not attributed misstatement or suppression of fact despite having asserted fraud committed by the exporter resulting in clearance of imported goods without payment of duty?

[b] Whether in the facts and circumstances of the case, the Tribunal was justified in holding that though the case involved fraud committed by the exporter resulting in clearance of imported goods without payment of duty by the importer, Revenue is not entitled to recover the customs duty?

2. The appellant is aggrieved by the order dated 23.3.2007 made by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal). The relevant facts as stated by the appellant in the memorandum of present appeal read as under:

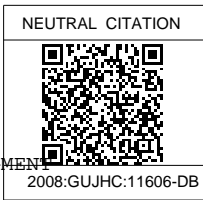
“3.1 One M/s Beni Exports had obtained DEPB license in 2000 of the value of Rs.94,56,252/-. On investigations, it was revealed that the said license was obtained by manipulating the export documents and by committing fraud and therefore, the result of the investigation was reported to the



Director General of Foreign Trade [DGFT] who cancelled the License vide order dated 24.10.2001. In the meantime, M/s Beni Exports had transferred the DEPB scrip No.3010005328 dated 22.8.2000 to the present respondent – M/s. Binani Cement who utilized the same to discharge the duty liability for importing goods vide bill of entry no.02978 dated 3.10.2000. That the goods imported against the aforesaid bill of entry were exempted from payment of duty subject to production of a valid DEPB License as per the Notification No.34/97- Cus dated 7.4.1997.”

3. According to the learned counsel for the appellant once the license was cancelled, it operated from the date of issue of license and therefore, any imports on the basis of such license were liable to duty. The respondent assessee had not paid such duty and was thus liable but the Tribunal had wrongly come to the conclusion that the respondent was not liable by holding that revenue was not entitled to invoke the extended period of limitation available under section 28 of the Customs Act, 1962 (the Act). That fraud vitiates every act and even if there may be no deliberate act on part of the respondent assessee in commission of fraud yet respondent assessee cannot escape liability to pay duty once the import was found to be on an invalid license.

4. Section 28 of the Act permits issuing of a notice to show cause and determination of the amount of duty or interest; and thereupon payment of duty by a person to whom a notice is served for either short levy of duty or non levy or erroneous refund and the period of limitation that is prescribed is six months. Proviso to section 28(1) of the Act carves out an exception and enlarges the period of limitation to a period of five years provided the non-levy, short levy etc. are by reason of collusion or



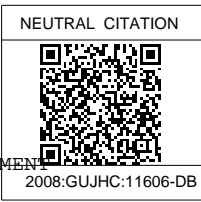
any willful misstatement or suppression of facts by importer or the exporter etc.

5. In the present case admittedly, respondent assessee is an importer who imported the goods vide bill of entry No.02978 dated 3.10.2000 on the basis of license dated 22.8.2000 which was transferred by the exporter in favour of respondent assessee. The said license came to be cancelled by the Director General of Foreign Trade vide order dated 24.10.2001. In light of these facts, both Commissioner (Appeals) and the Tribunal have concurrently found that there was no misrepresentation or suppression of facts as on the date of clearance of the imports in as much as the license was valid at the time of import. Accordingly, the demand based on an exercise within the larger period of limitation was not permissible as the same was barred by limitation.

6. In fact, in paragraph No.4 of the order of Tribunal, it is recorded “Revenue in their memo of appeal have not attributed any mis-statement or suppression of fact to the respondent herein. They have simply asserted that the case involved fraud committed by the exporter resulting in clearance of imported goods without payment of duty by importer and as such, Revenue should be allowed to recover the customs duty.”

7. In the aforesaid factual matrix after appreciation of evidence on record, the Tribunal has come to the conclusion that there is no collusion, willful misstatement or suppression of facts qua the importer namely the person against whom the demand is being made. The Tribunal has thus upheld the view expressed by the Commissioner (Appeals).

8. In light of the aforesaid facts and circumstances of the case, it is



apparent that there is no error in law committed by the Tribunal so as to warrant interference. No question of law, as proposed or otherwise, much less a substantial question of law can be said to be arising out of the impugned order of Tribunal. The appeal is accordingly dismissed.

(D.A.MEHTA, J.)

(HARSHA DEVANI, J.)

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