

COMMISSIONER OF CUSTOMS (IMPORTS) BOMBAY

v.

M/S. HICO ENTERPRISES  
(Civil Appeal No. 2418 of 2006)

APRIL 29, 2008

[DR. ARIJIT PASAYAT, P. SATHASIVAM AND DR.  
MUKUNDAKAM SHARMA, JJ]

*Customs Act, 1962:*

*s. 28(1) – Transferable Value Based Advance Licence – Purchased by assessee – Show cause notice to assessee alleging contravention of conditions of Notification no. 203/92 – Tribunal holding in favour of assessee – HELD: In view of the fact that in the Notification there was no reference to alleged infraction by the original licence holder, judgment of the Tribunal does not suffer from any infirmity – Notification no. 203/92 – Cus. dated 19.5.1992.*

**The respondent-assessee purchased transferable Value Based Advance Licence from the original licence holder on 20.4.1994. A show cause and demand notice dated 4.9.1999 was issued to the assessee alleging contravention of conditions of Notification no. 203/92-Cus dated 19.5.1992. The Commissioner of Customs (Import) confirmed the demand. However, the Customs, Excise and Service Tax Appellate Tribunal held that the transferee could not be once again compelled to prove that export obligation under the Notification was fulfilled by the original licence holder; and that the transferee could not be called upon to fulfil condition (v)(a) of the Notification. Aggrieved, the Revenue filed the instant appeal.**

Dismissing the appeal, the Court

**HELD:** In view of the fact that in the show cause notice issued on 4.3.1999, there was no reference to the

A **alleged infraction by the transferor of the licence in question, the judgment of the CESTAT does not suffer from any infirmity to warrant interference. [para 6] [3-G]**

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B From the final Order No. M/1152/WZB/2004/C-1 dated 20/9/2005 of the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Mumbai in Appeal No. C/1345/2002-Mum

WITH

C C.A. Nos. 2447, 4009 of 2007, 4680 of 2006 and 645 and 2529 of 2008.

D V. Shekhar, T.R. Andhyarujina, D.A. Dave, S.K. Bagaria, S. Ganesh, Abhigya, Alka Sharma, Arvind Kumar Shukla, P. Parmeswaran, B. Krishna Prasad, Tarun Gulati, Jaiveer Shergill, Tushar Jarwal, Praveen Kumar, V.M. Dopiphode, Nitin Mehta, Rajesh Kumar, Chandra Shekhar, Himanshu Shekhar, Arunabh Chowdhary, Anupam Lai Das, Ruby Singh Ahuja, Javed Muzaffar, Pranav Sen, Umesh K. Khaitan, Rohina Nath and Dipti Sarin for the appearing parties.

E The Judgment of the Court was delivered by

Dr. **ARIJIT PASAYAT, J.** Heard.

F Challenge in this appeal is to the order passed by Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (in short 'CESTAT') allowing the appeal filed by the appellant.

Background facts in a nutshell are as follows:

G Appellant acquired and/or purchased transferable Value Based Advance Licenses (in short 'VABAL') including a license dated 19.1.1993-94 issued in the name of M/s. Amar Taran Exports, New Delhi. Same was purchased on 20.4.1994. Appellant on the basis of that imported consignment vide Bill of Entry no. 881 dated 30.3.1994. Same was allowed duty free allowance. By show cause notice dated 04.03.1999 appellant was

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called upon to show cause why an amount of Rs. 16,74,702/- could not be recovered and demanded in terms of proviso to Section 28(1) of the Customs Act, 1962 (in short the 'Act') for alleged contravention of certain conditions of Notification No. 203/92-Cus dated 19.05.1992. Noticee denied the allegations. However, Commissioner of Customs (Import) confirmed the demand along with interest and penalty of Rupees One lakh. Same was held to be jointly payable by the original license holder and licensee. It was held that goods were liable in confiscation under Section 111 of the Act. As the goods were not available penalties of Rs. 3 lakhs and Rs. 1 lakh were levied under Section 112 (a) of the Act. A B

In view of divergence of views, the matter was referred to a larger Bench of the Tribunal. C

The Tribunal inter alia held as follows:

"Hence, the satisfaction arrived at in the above manner is final and binding on the customs department. The Customs department cannot compel the appellants importer, who are the transferee, to once again prove that the export obligation has been fulfilled by the original licence-holder in accordance with the notification and without availing input stage credit" D E

"The transferee cannot be called upon to fulfill the condition (v) (a) of the Notification No. 203/92-Cus. It is the original licensee, who has to satisfy the above referred condition, but not the transferee of the licence. In the result, the reference is answered accordingly". F

In this appeal challenge is to the aforesaid conclusions. Learned counsel for the respondent pointed out that no role was ascribed to it in the show cause notice. G

It is seen that in view of the fact that in the show cause notice issued on 4.3.1999, there was no reference to the alleged infraction of M/s. Amar Taran Exports, the transferor of the license in question, the judgment of the CESTAT does not suffer from any infirmity to warrant interference. The appeal is dismissed. H

R.P.

Appeal dismissed. H