

Cute Plastics (P) Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : May-19-1998

Reported in : (1998)(61)ECC267

Judge : S Peeran, A T V.K.

Appellant : Cute Plastics (P) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The short question that arises for consideration in this appeal is as to whether the duty paid on the granules i.e. intermediate product is required to be deducted while arriving at the assessable value. The appellants were proceeded against for not having added the CVD/CED paid on the granules which were used as raw materials in the manufacture of plastic films on job work basis for Andhra Pradesh Dairy Development Co-operative Federation Limited (APDDCF) and Andhra Pradesh Breweries Corporation Limited (APBCL). The appellants had sought for waiver of show cause notice and had requested for a lenient view. They have stated that such a benefit is available in the Sales Tax Act and hence they were under the impression that they were not required to add the CVD/CED paid on the granules. However, his contention was negatived.

2. The Ld. Counsel submits that this issue has been gone into in detail by a Large Bench as in the case of *Dai Itchi Karkaria v. CCE* reported in 1996(63) ECR 23 wherein, it has been held that duty paid on inputs which are captively consumed

are not required to be added in the assessable value. Ld. Counsel submits that this decision has been noted by this Bench in the case of CCE v. Vemy Containers Ltd. as per Order No. 39/97 Dated 13.12.96. He submits that this issue having been decided in the appellants favour, therefore, this appeal can also be allowed.

4. On a careful consideration of the submissions of both the sides, we notice that the issue is in favour of the appellant as per the above cited judgment. They are entitled to avail the deduction on the duty paid on CVD/CED on the granules. Therefore, the Department was not justified in recovering the amount of Rs. 9,77,934/- and imposing penalty of Rs. 75,000/-.

5. In that view of the matter, the impugned order is set aside and the appeal is allowed with consequential relief.

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