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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-20-2000

Reported in : (2002)(146)ELT321Tri(Mum.)bai

Appellant : Aditya Polymers Ltd.

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. In this application for early hearing, the claim made is that the issue stands settled. In this regard, reference is made to Order No.C-II/2055/99-WZB, dated 14-8-1999 (CCE, Ahmed-abad v. Jagdamba Polymers Ltd.). On perusal, we find it to be so and therefore, the appeal is taken up for disposal.

2. The appellants were consuming captively HOPE tapes in the manufacture of fabrics and sacks. Their refund claim was rejected on the ground of unjust enrichment. The Commissioner (Appeals) having upheld the same, the present appeal is filed.

2. The Commissioner in upholding the dismissal has observed that the judgment of Bombay High Court in the case of Solar Pesticides [1992 (57) E.L.T. 201 (Bom.)] has been challenged by the department before the Supreme Court. In the cited order in paragraph 4, the Tribunal has observed as under :-Assistant Collector of Customs v. East Anglia Plastics (India) Ltd. [1994 (74) E.L.T. 29 (Cal.)] have also held in the same way as the Bombay High Court in the case of Solar Pesticides (P) Ltd. v. Union of India.

The Supreme Court has dismissed an appeal filed by the department on identical ground in the case of International Conveyors [1996 (88) E.L.T. A165]. All these judgments were considered by the Tribunal in the case of Commissioner of Customs & Central Excise, Chandigarh v. R.K. Machine Tools Pvt. Ltd. [1998 (103) E.L.T. 689 (Tribunal)]. In this judgment also the Tribunal had followed the ratio of the Solar Pesticides case." 3. Consequently, the present appeal is allowed. The concerned authorities are, however, entitled to examine whether the contested goods were, in fact, used captively in the manufacture of final products.

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