

**Basera Exports Vs. Commissioner of Cus.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-12-2000

**Reported in :** (2001)(129)ELT720TriDel

**Appellant :** Basera Exports

**Respondent :** Commissioner of Cus.

**Judgement :**

1. This application is taken up finally since the issue lies in a narrow compass.
2. We have heard Shri M. Chandrasekhraran, learned Senior Advocate appearing along with Shri Roopesh Kumar, learned Advocate for the appellants and Shri M.M. Dubey, learned DR for the Department. The appeal is against the order of the Commissioner who has vide the impugned order, determined the duty demand as made in the show cause notice of the appellants and ordered the confiscation of the goods imported on the Advance licence under Sections 110 (d) and III(o) of the Customs Act, 1962. However, as the goods were not available for confiscation, he imposed a penalty of Rs. 25 lakhs on the importers.

The exemption which was granted under Notification No. 203/92 was denied in respect of the imports made by them, against licence No.P/K/2049018, dated 24-12-1992 and the demand of Rs. 6,0,00182/-along with interest was confirmed and demanded under the provisions of Section 28 of the Customs Act, 1962 and penalty of Rs. 60,00182/- was imposed under Section 114-A of the Customs Act and para 71 of the Exim Policy, 1992-97.

3. The appellants had imported certain goods on the Advance Import Licence and thereafter effected the exports. They were issued a show cause notice, as it appeared that they had imported by dis-regarding the availment of input stage credit (Modvat) on the inputs used in the manufacture of goods obtained and exported by them against DEEC import licence, these omissions and commissions appeared to have contravened the provisions of Section III(d) and III(o) of the Customs act as also which would constitute violation of conditions (ii) (b) and (v) (a) of Notification No. 203/92-Cus. read with provisions contained in Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 and Rules made thereunder.

4. The learned Senior Advocate has taken us through the findings recorded by the Commissioner, that the jurisdictional Central Excise Officers of the importer, as well as the supporting manufacturer, were required to ascertain as to whether the goods supplied and exported against the licence had availed any Modvat credit/input stage credit.

Adjudicator has found that he had been intimated by the said Central Excise Officers of the supporting manufacturer as given in the DEEC book, that it was denied by the manufacturers that any goods were supplied to the exporters. Therefore, the appellant did not fulfill the DEEC Scheme requirement and was not entitled to the benefit of exemption as claimed. The adjudicator thereafter proceeded to determine the confiscation, duty demand and penalties as recorded herein above.

5. To a question from the Bench, the learned DR submitted that the show cause notice brought out the allegation of suppression, mis-disclaration and fairly conceded that the enquiries made by the Central Excise Officers with the supporting manufacturers were not on record in the said show cause notice. However, he submits, that it was for the appellants to have brought it to the kind attention of the adjudication authority and the evidence substantiated the same was done as not available. They had not done so and cannot make a grievance at this stage.

6. We have considered the submissions. We find considerable force in the arguments of the Sr. Advocate, that principles of natural justice have been grossly denied, in the facts of the case, in as much as a date of hearing was fixed and thereafter adjourned. However, Commissioner thereafter records, that it was the appellants who did not produce the material documents to substantiate their defence in the time given. We find that when the case has been adjourned for another hearing, it was for the Commissioner to have put the appellants on notice, regarding the documents and it was also incumbent to have put the appellants on a notice, about the intimation and the material the adjudicator had received from the Central Excise Officer, pursuant to the enquiries, made by those officers. Since he has relied on the same and it was not disclosed, we consider that to be a gross violation of principles of natural justice to consider setting aside this order and remanding the case back for de novo. adjudication. The material, which the Revenue wants to rely, should be put to the notices and copies thereof, supplied. Only after recording their averments, should the adjudicator proceed to determine the matter afresh, according to law.

The matter needs to be sent back for complying with the Rules of natural justice.

7. In view of our findings, we waive the pre-deposit, admit the appeal, set aside the order and remand the matter back for de novo adjudication. Appeal and stay disposed of in above terms. Ordered accordingly.

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