**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**

**Usha Intercontinental (India) Vs. Cc**

**Usha Intercontinental (India) Vs. Cc**

**SooperKanoon Citation** : sooperkanoon.com/20564

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

**Decided On :** Jan-23-2001

**Reported in** : (2001)(96)LC294Tri(Mum.)bai

**Judge** : K Sreedharan, N T C.N.B.

**Appellant** : Usha Intercontinental (India)

**Respondent** : Cc

**Judgement** :

1. This appeal is directed against the duty demand of Rs. 18,92,881.82 made on the appellant under the impugned order in Original No.9/97/CAC/CC-I dated 27.1.1997 of the Commissioner of Customs-I, New Customs House, Mumbai.

2. Brief facts relevant to the dispute are that the appellant is a merchant exporter. The imported materials under DEEC scheme. The materials so imported were cleared without payment of customs duty as provided under Notification No. 159/90-Cus dated 30.3.1990. The goods were imported as replenishment in view of exports already undertaken and the appellants were not entitled to sell the goods in view of the provisions contained in para 250(2) of Exim Policy. Under the policy, if the exported goods had availed themselves of modvat facility in respect of inputs used in their production, the goods imported by way of replenishment could not be sold. The appellants had also bound themselves to the Customs Authorities to this effect. Being merchant exporters, the appellant did not have facility to manufacture.

Manufacture was being done by their supporting manufacturer. The imported materials were, therefore, transferred by the appellant to their supporting manufacturer. Subsequent investigations made by the Customs Authorities showed that part of the goods imported and cleared duty free as replenishment, in fact, had been sold off. The duty demand was made consequent upon such sale.

3. Two contentions have been raised in defence of the appellant during the argument of the appeal. The first defence is that no duty demand could be made against the appellants since they had transferred the goods to their supporting manufacturer and such transfer was permissible within the DEEC scheme and that sale of the goods was by the supporting manufacturer and not by the appellant. In this connection, it is submitted that the appellant had taken possible precaution against the sale of the goods by making the supporting manufacturer execute an indemnity bond. It is the submission on behalf of the appellant that since the appellant had taken all the necessary precautions that could be taken by a merchant exporter, there is no violation of the DEEC scheme by him and no duty demand could be raised against him. The second contention is that, in a case like this, the action available to the Revenue authority is to impose penalty on the supporting manufacturer. The appellants have relied on the decision of the Supreme Court in the case of State of Madras v. Radio and Electrical Limited 1996 (18) STC 222 in support of this contention. It has also been submitted that, if at all, demand is to be made on the appellant, it should be restricted to recovery of the modvat claimed by the supporting manufacturer with regard to the inputs used in the manufacture of the export goods and not custom duty in respect of the imported replenishment materials.

4. As against the aforesaid contentions on behalf of the appellant, it has been submitted by the Learned DR that the liability of the importer to pay duty in the event of violation of DEEC Scheme remains settled by the decision of the Orissa High Court reported in 1987 ELT 349. Learned DR submitted that in this case, the High Court held that goods imported duty free under the DEEC scheme will have to discharge customs duty due on them in the case of any violation of the scheme. The Ld. DR also submitted that the duty exemption availed of by the appellant in respect of replenishment material was subject to the condition that the goods

should not be sold off as the exported goods had been manufactured under the mod vat scheme. The appellant had also bound himself to this condition. Being fully aware of their liability under the scheme, they had also taken care to indemnify themselves through a bond taken from their supporting manufacturer. The DR submitted that in these facts and legal situation it was not open for the appellant to argue that they had no responsibility with regard to what their supporting manufacturer did (selling away of the replenishment goods).

The Ld. DR also submitted that the principle contained in the Supreme Court decision in the case of M/s. Radio & Electrical Ltd. did not apply to the appellant's case. That order under the Sales Tax Act related to sale of goods at concessional rate among registered dealers based on FORM-C and had no application to present case. The provisions relating to DEEC import and duty exemption on such imported goods are quite different from the Sales Tax Act provisions. Under the DEEC Scheme, the importers are liable to pay duty on the imported materials, in case terms covering duty free import are violated. No such liability exists under the Sales Tax Act in respect of the goods sold by one dealer to another based on FORM C. The Id. DR also submitted that the appellant's request for recovery of modvat credit availed on the raw materials by the supporting manufacturer can not also be accepted since the Amnesty scheme permitting that was in force only till January, 1991. DR submitted that the import of the goods in question had taken place much prior to the Amnesty scheme, show cause notice had been issued to the appellant for recovery of the duty and the case was pending during the currency of Amnesty scheme. The appellant, however, chose not to opt for this scheme. Since scheme has subsequently lapsed, the DR contended, the same is not available to the appellant.

5. It is clear from the record of this case that the duty free clearance of the replenishment material was on condition that the imported goods shall not be sold off but would be used in further manufacture. The appellant importer had bound himself to this condition and had also taken indemnity bond from his supporting manufacturer. The appellant was responsible for fulfilling the condition and their liability with regard to the imported goods was not capable of being transferred to the supporting manufacturer. This is the legal position obtaining from the

judgement of the Orissa High Court. Therefore, there could be no dispute about the legal validity of the duty demand made in the impugned order. That the appellants were fully aware of this position is clear from the fact that they had obtained an indemnity bond from their supporting manufacture. The appellant's offer to make good the modvat credit taken by their supporting manufacturer can not also be accepted since the Amnesty scheme which permitted it is no more in force. The proceedings against the appellant were continuing during the currency of that scheme. They could have availed themselves of the scheme during its validity. Having not cared to do the same at that time, the appellant has missed that bus and cannot seek to board it now. The appellant's contention that a violation of this kind can be dealt with only through the penalty provision in the Customs Act has also no validity. This claim is based on the decision of the Supreme Court in the Sales Tax case of M/s. Radio & Electrical Ltd. As has been correctly pointed out by the Ld. DR, the provisions of the Sales Tax Act relating to sale of goods among dealers against Form C and the provisions under the DEEC scheme for duty free import of raw materials are entirely different. That judgement has, therefore, no relevance to the present dispute. The position with regard to duty free imports under DEEC scheme remains settled by the judgement of the Orissa High Court which has been relied upon by the revenue and the decision of the Apex Court in Sheshank Sea Foods Pvt. Ltd. v. Union of India . Demand of duty in respect of goods imported duty free under DEEC scheme for violation of the conditions of exemption is clearly legal.

6. In view of what has been stated above, we hold that the duty demand of Rs. 18,92,881,82 made against the appellant, in the impugned order is legally valid and correct. The same is, therefore, confirmed and the appeal is rejected

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**