

M/S Eon Polymers Ltd. Vs. Cce Jaipur

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-20-2001

Reported in : (2001)(135)ELT1316TriDel

Appellant : M/S Eon Polymers Ltd.

Respondent : Cce Jaipur

Judgement :

1. All the appeals are directed against order in original No. 16/2000 dated 11.5.2000 of the Commissioner of Customs of Central Excise and Customs, Jaipur. Accordingly they are disposed of by this common order.

2. Appellant M/s EON Polymers Ltd., Bhiwani is a 100% EOU set up for the manufacture of PET bottles. For the manufacture of such bottles in the EOU they had imported, under the EOU scheme, machinery without payment of duty. Some indigenously manufactured, machinery were also received duty (Central Excise) free for the same purpose. In the same premises the appellant also set up another unit for manufacture and supply of PET bottles to the Domestic Tariff Area (DTA). After investigation, the Revenue Authorities alleged that the appellant had clandestinely manufactured and cleared into the domestic area without payment of duty, PET bottles from the EOU. It was also alleged that such clearances were falsely shown as the manufacture in the appellant's unit for DTA production. The impugned order confirmed the allegation and held that over 13 lakh PET bottles had been clandestinely produced in the EOU and cleared without payment of duty to the DTA. Consequently, the order confiscated the machinery of the appellant

and other goods and also imposed various penalties. Duty has also been demanded including on the machinery imported without payment of duty for EOU.³ The contention of the appellant is that the findings reached by the Commissioner are not only against facts of the case, the actions taken by him are also contrary to the scheme for EOUs. The learned Consultant for the appellant stressed during hearing today that as an EOU, the appellant's obligation was to manufacture and export goods for a period of 10 years and the non-duty paid imports of the appellant were under customs bond. He submitted that EOU scheme is a scheme for promotion of export production administered by the Commerce Ministry and the order of the Commissioner in demanding duty on the machinery imported for export production during the period of bond was clearly beyond his authority. Occasion for demand of duty on the machinery, arose only in the event of closing of the EOU and the de-bonding of the machinery.

The learned Consultant submitted that this legal position remains settled under the different orders of this Tribunal (Premier Granites Ltd., Vs CCE, Guntur reported in 2000 (122) ELT 220, CCE Guntur Vs. Regency Ceramics Ltd., reported in 2000 (4) RLT 1005 etc). He also submitted that the action of the Commissioner is contrary to instruction on the subject by the Central Board of Excise and Customs.

He referred in particular to Circular No. 38/95-Cus dated 17.5.95 regarding monitoring of EOU's by the Department of Revenue. The learned Consultant submitted that an EOU is entitled to running a unit for production of goods for DTA also from the same premises. Thus, the entire functioning of the appellant was in conformity with the instructions. He further submitted that any action to wind up an EOU can be taken by the Development Commissioner for Export Processing Zone only. In the present case, by demanding duty on the imported goods, the Commissioner has in effect ordered the closure of the E.O.U. The learned consultant, therefore, submitted that the entire action of confiscation of the imported machinery and demanding of duty on the machinery should be held as clearly illegal and the orders set aside so that the unit could start functioning again.

4. The appellants have also submitted that the duty demand has been confirmed without considering the evidence placed on record by them.

They also submitted that the valuation adopted by the Commissioner for arriving at the duty amount in respect of the PET bottles is contrary to the decisions on the subject by the Tribunal. Their grievance is that the Commissioner has treated the entire price of the bottles in question as assessable value, while it is settled law [Srichakra Tyres Ltd. & Ors. Vs. CCE, Madras reported in 1999 (32) RLT 1 (CEGAT-LB)] that gross realisation on the sale of goods must be treated as cum-duty value and deduction towards duty should be made from such price for arriving at the assessable value.

5. In view of the glaring illegalities in the order, The learned Consultant has prayed that the entire order should be set aside and the matter be remanded to the Adjudicating Authority so that a reasonable order is passed after taking into account relevant evidence and law.

6. We have heard the learned DR who submitted that the present case involved deliberate evasion of duty by the appellant. Even though appellant had imported machinery without payment of duty for export production and had also received raw materials without payment of duty for export production, they had not carried out any export order. He submitted that after examining the entire evidence, the Commissioner had come to a clear finding that the DTA unit was only a facade for the purpose of carrying out clandestine activities from the EOU. He, therefore, submitted that the order is well founded and has been reached on a correct appreciation of evidence.

7. The appellants started production in May, 1997 as an EOU. They have also obtained permission from the Competent authority for clearance of their trial production to the domestic area. The appellant's facility for domestic production has been set up with the full knowledge of Central Excise Authorities and that unit has also been registered with the Central Excise. The appellants obligation under the EOU scheme is to carry out production and export of PET bottles up to the agreed value during a fixed period of time. The scheme is monitored and administered by the Development Commissioner incharge of EOUs. We have repeatedly held in our orders that the decision regarding wind up of an EOU is primarily a decision to be taken by the Development Commissioner. Any demand

of duty by the Customs Authorities prior to such a decision, creates entirely unintended difficulties. In the present case, while the goods have been bonded for a period of 10 years, the Customs Authorities have chosen to seize the goods and to confiscate the machinery within a short period of commencement of production, that too on a charge of duty evasion in respect of 13 lakh bottles. The appellants are, therefore, right in their contention that seizure and confiscation of the machinery and demand of duty on them were clearly pre-mature and against the EOU scheme. Such actions, therefore, cannot be sustained. Accordingly, we set aside the confiscation of capital goods of the appellant (including indigenously produced machinery) and also quash the duty demand on those goods.

Coming to the demand of duty on PET bottles allegedly manufactured and cleared by the appellant, it is settled law that gross price realised by a manufacturer can only be treated as cum duty price. This is equally so in respect of clandestinely manufactured goods also. The Commissioner was therefore, clearly in error in demanding duty after treating the sale price as assessable value. Therefore, the duty demand is required to be re-computed after determining the correct assessable value. The appellants had rebutted the allegation of clandestine manufacture of goods in the EOU. The evidence produced by them has also not been fully weighed before passing the impugned order. In these circumstances, the entire case is required to be readjudicated after giving the appellants an opportunity to present their case.

8. In view of what has been stated above, the impugned order in as far as it relates to the present appellants is set aside and the cast is remanded for a fresh adjudication to the jurisdictional Commissioner.

We make it very clear that the appellants' plant and machinery shall be released to them immediately so that they can resume production activity at the earliest. The manufacture and sale of the goods from both the EOU and DTA unit shall in no way be affected by the remand proceedings.

9. The appellant had made a deposit of Rs. 1.5 lakhs pursuant to our order in their stay application. Since even according to appellant, certain amount of duty would payable by them, we considered it appropriate in the facts of the case that the said

deposit remains with the Revenue during the pendency of the adjudication proceedings. The same can be appropriated towards the duty adjusted at the time of final adjudication.

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