

**Centwin Vs. Commissioner of Customs, Chennai**

**Centwin Vs. Commissioner of Customs, Chennai**

**SooperKanoon Citation :** [sooperkanoon.com/26478](http://sooperkanoon.com/26478)

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

**Decided On :** Oct-31-2001

**Reported in :** (2002)(149)ELT573Tri(Chennai)

**Appellant :** Centwin

**Respondent :** Commissioner of Customs, Chennai

**Judgement :**

1. This appeal is directed against order Original No. 54/2000 dt.

26.9.2000 of the Commissioner of Customs, Chennai where-under demand of duty was made in respect of certain fabrics imported by the appellants under DEEC scheme. Penalty of Rs. 5 lakhs has also been imposed on the appellants. The demand of duty and imposition of penalty are on the ground that the fabrics cleared duty free under DEEC licence where polyester fabrics, while the DEEC licence was in respect of cotton fabrics.

2. When the matter came up for hearing before us today, the Ld.

Consultant, Shri M.S. Kumaraswamy and Ld. Counsel, Shri A.K. Jayaraj submitted that, in the present case, the appellants had processed the fabrics imported by them under DEEC scheme and had exported them as garments. He, therefore, submitted that the substantive obligation under the DEEC Scheme remains fulfilled. He pointed out that the buyer of the exported Garments had arranged for the supply of the imported fabrics and the same fabric had been processed by

them and exported to the buyers. Therefore, no dispute existed between the customer, authorities and the appellants that the fabrics imported were not the same which was exported after processing despite the dispute raised about the difference in description of the fabrics in the imported DEEC Licence and the shipping documents.

3. The Ld. Consultant for the appellants has submitted that it is settled law that once the export obligation had been fulfilled no duty demand can be raised and penalty imposed. In this context, he relied on the decision of this Tribunal in the case of Dolphin Drugs (P) Ltd. v. CC, Mumbai reported in 1999 (35) RLT 80 (CEGAT) in the case of K.L.J. Plastics v. CCE, Chennai and in the case of Raja Importers and Exports v. CC., Mumbai 4. We have heard Ld. DR also. While he pointed out that as the case did not correspond to the description in the licence, the action taken by the Commissioner was legal.

5. Exporters are entitled to receive raw materials for export production duty free under the DEEC Scheme or the duty paid on the raw materials is reimbursed through draw back. Either way, export goods are to be relieved import duty burden on their raw materials.

6. The fabrics imported by the appellants under the two Bills of Entry were originally allowed clearance by the Customs Authorities after accepting the licence. It is not in dispute that the appellants used the same fabrics which was imported for export production and exported the goods. Thus, correlation between imported goods and the exported goods is complete. The imported fabrics were arranged by the buyers of the finished garments and the buyer has also accepted the exported garments as produced from the fabrics which they arranged to send.

Thus, in the present case the appellants have fully satisfied the DEEC criterion, i.e. use of the imported materials for export production and export of the goods. The dispute now raised is only as to whether the description of the goods tallied in the various documents tallied with the goods. The Commissioner has also admitted that the appellants would have been entitled to draw back had they not followed the DEEC Rules.

Now it is too late for them to claim draw back as the goods remains already exported. In these facts and circumstances if the duty demand in the impugned order is sustained, it would create a totally unintended situation of export goods having to bear the burden of customs duty in respect of raw materials. This is completely contrary to the legal provisions. If the difference in description of the goods had been pointed out by the Customs Authorities at the time of import of the goods the appellants could have either got the description amended as to match the goods or to resort to draw back route. The delay in raising the dispute cannot be allowed to have effect of denying export goods duty exemption. We find that this Tribunal has taken a view in the decisions referred to be the appellants that the benefit of DEEC scheme is not to be denied in cases where the export obligation has been met. We are of the opinion that the present case is covered by those earlier decisions of this Tribunal.

7. In the light of what has been stated above we consider the duty demand and imposition of penalty made in the impugned order to be not justified in the facts and circumstances of the case. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief to the appellants.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**