

Commr. of Cus. and C. Ex. Vs. Solitaire Machine Tools P. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-13-2002

Reported in : (2003)(152)ELT384Tri(Mum.)bai

Judge : K Usha, N T C.N.B.

Appellant : Commr. of Cus. and C. Ex.

Respondent : Solitaire Machine Tools P. Ltd.

Judgement :

1. Both assessee and the revenue are in appeal against the same order in appeal i.e. GS/102/BRD/97 dated 17-7-97 of Commissioner of Central Excise (Appeals) Mumbai. Accordingly, both the appeals were heard together and are disposed of under this order.

2. The dispute is regarding the duty liability of a 100% EOU upon debond by in terms of Notification No. 13/Cus., dated 6-2-81 as amended.

3. Brief facts of the case are that in 1987 the appellant M/s.

Solitaire Machines Tools Pvt. Limited obtained permission to set up an EOU for the manufacture of Cincinnati-20M Centreless Grinder. The project involved importation of capital goods worth over 6.4 lakhs US\$.

After being in manufacture till 1996, the appellants sought permission to debond from the 100% EOU scheme. On debonding, the appellant became liable to pay

duty of customs and excise in respect of imported capital goods, raw materials in stock etc. The disputes that arose with regard to the quantum of duty so payable is the subject matter of present appeals.

4. First we take up for the consideration, Appeal No. E/1795-R/97-Mum filed by the assessee. The issue raised in this appeals are whether Jigs and fixtures were liable to be imported under Notification No.13/81. The objection has arisen because, at the time of the import of these items, Notification No. 13/81 did not specifically cover these items. Sl. No. 12 of the Notification covering Tools, Jigs, Gauges, Fixtures, Moulds, Dies, Instruments and Accessories' was incorporated only later. The Revenue contends that until Sl. No. 12 was incorporated, Jigs and Fixtures were not eligible for the exemption. As against this, the assessee contends that the absence of Sl. No. 12 did not make any difference inasmuch as Jigs and Fixtures remained covered under the heading at Sl. No. 1 of the notification "Capital Goods". It is their submission that the amendment of the notification to incorporate Sl. No. 12 specifying tools, jigs etc. was only clarificatory. They further submit that, in any event, it was too late in the day for the revenue to raise this objection inasmuch as the list of capital goods authorized to be imported under EOU scheme specifically covered these items. They maintain that if the Revenue did not consider the items to be covered as capital goods, the objection should have been raised at the time of import of the goods and not at the time of debonding.

5. The second point in dispute is the period for which depreciation was to be allowed while valuing the capital goods. The dispute has arisen because the assessee filed application in October, 1996 before the Revenue authorities by valuation and computation of duty was computed by Customs only in March, 1997. The assessee contends that as the duty liability is to be worked out at the time of debonding of the goods, the entire period up to computation of duty was to be taken into account, while revenue has computed duty liability after allowing depreciation for the capital goods upto the period of filing of application i.e. October, 1996.

6. Items like Jigs and fixtures are for repeat, long time use in manufacture. Therefore, they form part of the equipment used in production, as opposed to raw materials, parts etc. which are consumed in manufacture. Evidently, they qualify to be treated as capital goods.

Further, these items were specifically figuring in the list of capital goods for import as approved by the authorities. In such circumstances, we are not able to find any merit in the objection raised by the Revenue authorities. With regard to the period of depreciation also the appellant is right in claiming depreciation upto March, 97. This is clear from the terms of the Notification itself. Explanation to Notification No. 13/81 states that "the depreciation....shall be allowed for the period from. Upto the date of payment of duty". The contention of the Revenue that the depreciation shall be allowed only till the date of application for debonding is contrary to the provision of Notification itself.

7. We now take up Appeal No. E/1687/2002-Mum filed by the Revenue. The main point raised in this appeal is that since the appellants did not completely fulfill export obligation, the gap in the export performance should be taken into account while computing the duty liability at the time of debonding. The contention of the appellant on this issue is that export obligation was an entirely separate issue from duty liability and that obligation remained covered under the undertaking with the DGFT and the revenue has no concern with that issue. They also maintain that the point taken by the Revenue is beyond the scope of Notification No. 13/81. As against this, the learned SDR makes the point that duty free imports by EOU being link to export obligation, that obligation has direct nexus to the duty liability at the time of debonding. A perusal of the Notification No. 13/81 and the EOU provisions, makes it clear that duty liability upon debonding is in no way connected to discharge of export obligation. It is clear from the notification that under the EOU scheme imported goods were given exemption from duty as long as they were used for production of export goods. Thereafter, upon debonding the goods are treated as imported goods and subjected to duty as applicable to other import goods. That the original import was under an export obligation scheme makes no difference to duty liability. Therefore, there is no legal basis to the revenue's effort to link the duty liability to discharge of export obligation.

8. The second point raised in the appeal is that manufactured goods in stock should have been subjected to duty at the time of debonding. On this issue, the submission of the assessee is that duty liability of these goods would arise and is to be discharged at the time of their removal out of the factory and not prior to that. They maintain that once the unit is debonded, duty liability will arise on the manufactured goods in stock as in the case of any other goods manufactured in India. We find that the revenue's demand for payment of duty on the manufactured goods in stock at the time of debonding of the EOU is not sustainable. Upon debonding an EOU become a manufacturing unit in the domestic tariff area. The goods produced by that unit becomes liable to assess the central excise duty like any other goods manufactured in the domestic tariff area. Same is the position in respect of goods lying in stock at the time of debonding, because those goods are become goods lying in stock with a unit in domestic tariff area. The question of payment of duty on such goods arises only at the point of removal of those goods from the place of manufacture. Demand of duty at the lime of debonding is clearly pre-mature.

9. In view of our findings above, Appeal No. E/1795-R/97-Mum filed by M/s. Solitaire Machine Tools Pvt. Limited succeeds and is allowed.

Appeal No. E/1687/98-Mum filed by Revenue fails and is rejected.

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