

Cce Vs. Autolite Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-11-2002

Reported in : (2003)(86)ECC179

Judge : K Usha, a T V.K.

Appellant : Cce

Respondent : Autolite Limited

Judgement :

1. Revenue has preferred this appeal against the Order-in-Original No.39/2000 dated 15.11.2000 passed by the Commissioner, Central Excise.

2. Ms. Neeta Lal Butalia, learned SDR, mentioned that the Respondents M/s. Autoiite (I) Ltd. is a hundred percent Export Oriented Undertaking for manufacture and export of Halogen Lamps of Auto head lamps/sealed beams, etc.; that as the Respondents did not fulfil the obligation of exporting goods worth Rs. 1673 lakhs by 1994-95, a show cause notice was issued to them on 26.4.2000 for confiscation of the capital goods imported/procured indigenously, for demanding customs duty and Central Excise duty on the goods imported and indigenously procured and for imposition of penalty and interest; that the Commissioner has dropped the demand of duty on the sole ground that as per condition No. 6 specified in Notification No. 13/81 -Cus dated 9.2.1981, the duty can be demanded only when it is proved that the materials have not been used for the intended purposes i.e. in the manufacture of articles for export and this being not the case, violation of condition No. 6 has

not been established. The learned SDR submitted that the obligation to pay duty is not solely restricted to violation of the said condition No. 6; that the conditions stipulated in the LOP issued by the Board of Approval of 100% EOUs as also the other conditions stipulated in Notification No. 13/81-Cus are required to be fulfilled; that as per condition No. 3 of the Notification, the Respondents.....(illegible) to export goods worth Rs. 1673 lakhs by 1994-95 against which they had exported only 1129.13 lakhs and thus there is a shortage in export obligation to the extent of Rs. 543.87 lakhs. She, further, submitted that said condition No. 6 stipulates execution of a bond by the Respondents binding itself (i) to fulfil the export obligation and conditions stipulated in the Notification and in or under the Export & Import Policy, and (ii) to pay on demand an amount equivalent to the duty leviable on the goods as are not proved to the satisfaction of the Assistant Commissioner to have been used in the manufacture of article for export; that if the interpretation put by the Commissioner is accepted no action can be taken against any 100% EOU for not complying with the various conditions. She also referred to the Central Board of Excise & Customs Circular F.No. 307/S/97-FTT dated 6.8.1997 wherein it has been clarified that in view of the provisions contained in Notification No. 13/81-Cus. Rule 196 of the Central Excise Rules, 1944, Section 72 of the Customs Act and the EXIM Policy, 1992-97, duty may be demanded from 100% EOUs who have failed to achieve the stipulated Value Addition or Export Obligation.

3. On the other hand, Shri B.L Narasimhan, learned Advocate, submitted that the approval was given to the Respondents for setting up of the 100% E.O.U vide letter dated 25.8.88; that the condition stipulated in the letter of permission was that they would undertake to export the entire production, excluding rejects not exceeding 5%, for a period of ten years; that as such there was no obligation on them to export a particular quantity or value upto 5 years; that further a minimum of 20% value addition was required to be achieved on all authorised production; that capital goods have been installed in EOU premises and are used for export production; that these capital goods are even used today for the manufacture of the final product; that after 1994-95, they have exported goods worth Rs. 3283.357 lakhs during 1995-96 to 1997-98; that the export during these three financial year is almost double the amount of export obligation. He, further, submitted that the imported and indigenous raw materials have been used entirely in the production

of the final product; that in terms of Condition No. 6, they had executed a bond; that they are liable to pay, a demand an amount equal to the duty leviable on the goods as are not proved to have been used in the manufacture of articles for exports; that as the capital goods and raw materials have been used in the production of export and the finished goods so produced have been exported, condition No. 6 has been complied with; that they have achieved the value addition. He also mentioned that Director General of Foreign Trade (DGFT) has imposed a penalty of Rs. 2 lakhs for non-fulfilment of export obligation which on appeal has been reduced to Rs. 50,000 by the Appellate Committee taking note of the fact that a growth rate of 60% was achieved in exports in 1996. He finally referred to letter dated 9.3.98 of the DGFT wherein it was mentioned that the Respondents had been penalised for non-fulfilment of Value Addition and Export Obligation only and have not been debarred from importing the goods and they are still operating under EOU Scheme and as such benefit of duty exemption cannot be denied to an EOU.

4.1 We have considered the submissions of both the sides. The respondents have imported the capital goods availing the benefit of exemption under Notification No. 13/81-Cus, dated 9.2.1981. This Notification exempts specified goods when imported into India for the manufacture of articles for export out of India by 100% E.O.U.s subject to the conditions specified in the Notification. One of the conditions is that the importer exports out of India 100% or such other percentage as may be fixed by the Board of Approval for the period stipulated by the Board. Condition No. 6 of the Notification reads as under: "The importer executes a bond in such form and for such sum and with such authority, as may be prescribed by the Assistant Commissioner of Customs, binding himself to fulfil the export obligations and conditions stipulated in this notification and in or under the said Export and Import Policy and to pay on demand an amount equal to the duty leviable on the goods as are not proved to the satisfaction of the Assistant Commissioner of Customs to have been used in the manufacture of articles for export."

4.2 The show cause notice was issued to the Respondents as they had failed to fulfil the export obligation since the permission was granted to them for export of their entire production, excluding rejects not exceeding 5% and they were required to achieve the value addition for a minimum percentage of 23.79% within 5 years from the date of commencement of production and they were also

required to fulfil the export obligation of minimum Rs. 1673 lakhs for a period of five years.

It is not disputed that during the first five years, the Respondents did not export the goods worth Rs. 1673 lakhs, This is also evident from the Order dated 4.9.96 passed by the Additional Director General of Foreign Trade by which he had imposed a penalty of Rs. 2 lakhs on the Respondents for non-fulfilment of export obligation. The Appellate Committee by its order dated 16.3.99 has reduced the penalty to Rs. 50,000. In view of these facts, it cannot be claimed by the Respondents that they have complied with all the conditions stipulated in Notification No. 13/81 -Cus. The Adjudicating Authority has not correctly interpreted the Notification while holding that duty can be demanded only when it is proved that materials imported have not been used for the manufacture of articles for export. Condition No. 6 of the Notification clearly stipulates that the importer executes a bond binding himself to fulfil the export obligations and conditions stipulated in the Notification and in or under the Export & Import Policy. Condition No. 6 further mentions that the importer will also bind himself in the bond to pay on demand an amount equal to the duty leviable on the goods as are not proved to the satisfaction of the Assistant Commissioner to have been used in the manufacture of articles for export. This does not mean that the duty forgone can be demanded only when it is proved that materials imported have not been used for the intended purposes. Condition No. 6 is, in our view, relates to execution of bond and its contents. Duty is demandable from the importer if any of the conditions subject to which exemption was granted is not fulfilled. We, therefore, set aside the impugned order and remand the matter to the jurisdictional Commissioner for afresh adjudication after affording a reasonable opportunity of hearing to the Respondents and in accordance with law. The Adjudicating Authority may also consider, while adjudicating the matter, the export of goods made by the Respondents in subsequent years.