

J.K. Pharma Vs. Commissioner of Customs (import)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-26-2003

Reported in : (2004)(166)ELT407Tri(Mum.)bai

Judge : S T S.S., K Kumar

Appellant : J.K. Pharma

Respondent : Commissioner of Customs (import)

Judgement :

1. The issue involved in this case is Recovery of duty ordered to be paid jointly and severally by - i) The importer, who is the appellant herein who was a transferee of a DEEC licence, obtained by the Exporter M/s. Vantage Leathers India Pvt. Ltd., Madras & had cleared the goods as permissible on that licence under the provision of notification No. 203/92.

ii) The exporter of the goods viz. M/s. Vantage Leather India Pvt.

Ltd. who had alleged not reversed the modvat credit, alleged to have been availed on inputs used in the manufacture of goods exported.

& the levy of penalty under Section 112 (a) of the Custom Act on the importer the appellant herein.

2. The issue is no longer Res integra having been settled by the catena of decisions of this tribunal. The decision in the case of M/s. Good Luck Industries

[1999 (108) E.L.T. 818] holding in case of very said notification 203/92 CUS dtd. 19/05/1992 that Burden of Proof as to fulfillment of export obligation & whether Modvat Credit availed is to be discharged by original licensee (the exporter in this case) & not the appellant (the transferee importer) has been followed in many cases. Appeal filed by Revenue against this decision has been dismissed by S.C. (2000 (120) E.L.T. A 766 S.C.), following the same, the present appeal is required to be allowed.

3. It is also found that the advance licences were made transferable by the issuing authority on satisfaction that the burden cost upon the holders i.e. exporters thereon had been discharged. Therefore, extended period could not be invoked against the transferee is also now well settled.

4. From the show cause notice issued in this case, it is found that there is no material to come to a conclusion that as to how the department is coming to a conclusion that modvat credit was obtained by the exporters and the same was required to be reversed. The order is also silent on this vital aspect of first establishing that credit was in fact obtained by the exporters on the inputs used in relation to the manufacture of the exported goods. This condition (v) of Notification 203/92 is therefore not established, hence the liability of the confiscation under Section 111 (o) arrived at cannot be upheld. 5. The demand under Section 28 of the Custom Act has to be determined by the proper officer, who vide Section 28 (2) is required to determine the amount of duty and interest due from such person.

Therefore, the determination as arrived at jointly and severally are more than one person cannot be sustained.

6. In view of the findings herein above, the order as regards the importer appellant is set aside and his appeal allowed.

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