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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-27-2003

Judge : N T C.N.B., P Chacko

Appellant : Ratnagiri Textiles Ltd.

Respondent : Cce

Judgement :

1. Both the appellants are 100% EoUs. Being so, their clearances to Domestic Tariff Area (DTA) are liable to duty in terms of proviso to Section 3 (1) of the Central Excise Act. The effect of this is that duty payable on the goods cleared by these units would be the aggregate customs duty leviable on similar goods when imported into India.

2. In the present cases, dispute has arisen as to what is the rate at which additional duty of customs (CVD) is to be levied on the goods cleared by the appellant's EoU to the DTA. The appellants contended before the lower authorities that rate of duty applicable would be the effective rate of duty as fixed under exemption notification and not tariff rates of duty. The lower authorities held to the contrary, based on proviso to Section 5A of the Central Excise Act. This finding is challenged in the present appeals.

3. The appellants contend that it is well settled that additional duty of customs (CVD) is to be levied at effective rates and not at Tariff rates. They rely on the decision of the Gujarat High Court in the case of Varsha Exports and Ors. v. UoI

and Ors._2000 (40) RLT 9 (Guj) and letter F. No. 305/113/94-FTT dated 19th February 1998 of the Central Board of Excise and Customs.

4. We observe that the issue raised before the Gujarat High Court also was the effect of the same proviso to Section 5A on the clearance of goods to DTA by an EoU. After considering the various provisions of the statute, the High Court held that additional duty of customs shall be reckoned on the effective rate and not tariff rate. During the hearing of the case, learned counsel for the appellants placed before us a copy of the judgment of the Supreme Court dismissing the Special Leave Petition filed against the decision the Gujarat High Court in the case of Lucky Star International and others reported in 2001 (134) ELT 26 (Gujarat). The judgment of the Gujarat High Court was common for Lucky Star International and Varsha Exports cases. Apart from this, is the circular dated 19th February 1998 of the Ministry. The circular clarified as under: "2. Board have examined the issue carefully and find that the duty leviable under Section 3 of the Central Excise Act is to be calculated after giving effect to the exemption notifications.

Therefore, goods produced in EoUs/EPZs cannot be charged to duty at tariff rate.

3. Normally duty leviable would be read with notification for the time being in force. Even in absence of such words in the notification, the duty leviable would be effective rate of duty only. Even in Section 3 of the Customs Tariff Act, the words used are 'leviable for the time being in force'.

4. It is clear from the above that the issue raised in the present appeals remains settled in favour of the appellants. According, the appeals are allowed with consequential relief, if any, to the appellants after setting aside the impugned orders.