

**Futura Polymers Vs. Cce**

**Futura Polymers Vs. Cce**

**SooperKanoon Citation :** [sooperkanoon.com/32748](http://sooperkanoon.com/32748)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Oct-20-2003

**Reported in :** (2004)(91)ECC125

**Judge :** S Kang, a T V.K.

**Appellant :** Futura Polymers

**Respondent :** Cce

**Judgement :**

2. These applications filed by the applicants for waiver of pre-deposit of duty and penalty.

3. The brief facts of the case are that the appellants are 100% EOU engaged in the manufacture of Polyethylene Terephthalate Chips. The appellants were clearing Polyethylene Terephthalate Chips for manufacture of performs on stock transfer basis from 100% EOU Division to Perform Division and were availing the benefit of Notification No.2/95 dated 4.1.95. The appellants were determining the assessable value of the chips which were cleared on stock transfer basis to other division on the basis of FOB price of performs exported. The show cause notice was issued to the appellants for demand of differential duty by denying the benefit of above Notification No. 2/95 on the ground that the notification is not applicable to the goods cleared on stock transfer basis as there was no sale involved. The notice also proposed to demand differential duty alleging that the FOB value adopted for payment of duty for transferring of the PET chips to the Performs Division was not

correct. The adjudicating authority denied the benefit of Notification No. 2/95 and confirmed the demand and imposed the penalty on them.

4. The appellants filed the appeal before the Commissioner (Appeals) alongwith the application for waiver of pre-deposit of duty and penalty. The Commissioner (Appeals) directed the appellants to deposit a sum of Rs. 4 crores for hearing of the appeal. The appellants failed to comply with the stay order. Therefore, the appeal was dismissed for non compliance to the provisions of Section 35F of the Act.

5. The contention of the appellants is that now CBEC issued a Circular No. 38/2003-Cus dated 6.5.2003 clariying that the benefit of Notification No. 2/95-CE was also available when the goods were removed on stock transfer basis to another divisions of the same company.

6. We find that in view of the Circular dated 6.5.2003, the appellants have prima facie a strong case in their for waiver of pre-deposit of duty and penalty. Therefore, the pre-deposit of duty and penalty is waived.

7. With the consent of both the sides, the appeals are taken up for hearing.

8. The main issued involved in these appeals are that the benefit of Notification No. 2/95-CE is applicable to the goods which were cleared by 100% EOU on stock transfer basis to their other unit. Now the Board's Circular No. 38/2003-Cus dated 6.5.2003 clarified that the benefit of the Notification No. 2/95-Ce is available to such goods. For ready reference, the Circular of the Board is extracted as under :-  
"2. The matter has been examined by the Board. Notification 2/95-CE, dated 1.4.1995 provided for 50% exemption on ...."good allowed to be sold in India under and in accordance with the provisions of sub-paragraphs (a), (b), (d) and (h) of para 6.8 (earlier para 9.9.) of the Exim Policy" .....The notification, therefore, allowed concessional duty only when goods were sold into DTA in accordance with para 6.8 (or 9.9) of the policy. What is covered in para 6.8 (or 9.9) of the policy has been clarified by Ministry of Commerce in Appendix 14-IH of the Handbook of Procedures, 2002-2007 (Appendix 42 of the Hand Book of Procedure Vol-I - 1997-2002) that it covers any clearance to another DTA unit. This it is not

open to the Department to interpret the Exim Policy in any other manner than what has been mentioned in Appendix 14-IH (or 42). the word DTA sale has been loosely used in the Exim Policy and there is no definition of DTA sale in the Policy. Appendix 14-IH (or 42) clarifies that it not only covers transfers through sales to DTA units but also through other means. It would be illogical to contend that the concession is available if the goods are transferred on sale to an independent unit but it would not be available when removed on stock transfer to another division/unit of the same company.

3. The only point that needs attention, in case of stock transfers, is the valuation of the goods. In the case of EOUs, the valuation of goods cleared to DTA is to be done as per the provisions of Section 14 of the Customs act read with the customs Valuation Rules, 1988.

While determining value of goods under stock transfer, the fact that it is related person transaction, may also be taken into consideration." 9. In view of the above Circular and as the Commissioner (Appeals) had not decided the appeal on merits, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) for deciding afresh on merits after affording an opportunity of hearing to the appellants. The appeals are allowed by way of remand.

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