

C.C.E. Vs. Indian Polyfins Ltd. and Shalu

C.C.E. Vs. Indian Polyfins Ltd. and Shalu

SooperKanoon Citation : sooperkanoon.com/32852

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-29-2003

Reported in : (2004)(166)ELT493Tri(Mum.)bai

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

Appellant : C.C.E.

Respondent : Indian Polyfins Ltd. and Shalu

Judgement :

1. The issue raised in both the above-mentioned appeals of the revenue is the same. Accordingly, they are taken up together and are disposed of under this common order.

2. The respondents in both the cases are exporters of fabrics. They obtained intermediate goods namely, filament/partially oriented yarn under duty exemption certificate in terms of Notification No. 49/94 (NT) dated 22.9.94. The yarn so obtained was first texturised and thereafter woven into fabrics and then processed. These processes were carried out on job work basis by other parties for the respondents.

Fabrics received back were finally cut and packed by the respondents and exported. Show-cause notices were issued alleging that the respondents were not entitled to the benefit of receiving non-duty paid yarn under Notification No. 49/94 (NT) since most of the manufacturing processes were not carried out by the

respondents themselves. Such Show-cause Notices were confirmed by the adjudicating authorities.

However, when respondents took up the matter before the Commissioner (Appeals), that Commissioner allowed their appeals and held that their case was covered by the exemption. He also noted that the definition of 'manufacture' under Rule 13, (which related to non-duty paid export under bond of goods) covered also processes of blending of any goods or making alteration or other operation thereon. Commissioner (Appeals) reached a finding that such broad definition of 'manufacture' under Rule 13 brought the present appellants' activities within the purview of the Notification. He also relied on the clarification issued by the Board under Circular No. 155/66/95-CX-VI dated 17.10.95 in passing the order.

3. The present appeals make no case that the resultant goods were not exported. They only point out that the Circular of the Board was issued in clarification of an earlier notification.

4. We have perused the records and have heard both sides. We find no illegality or impropriety in the order passed by the Commissioner (Appeals). Rule 13 of the Central Excise Rules provides for export in bond of goods on which duty has not been paid. The instant Notification was issued under this Rule providing for removal of intermediate goods without payment of duty so that they could be used in export production. This is to ensure that interest (on duty amount, whether on the export goods or the inputs going into them) and other financial burdens do not make export goods unnecessarily more expensive. Board's clarification on the subject is in the exporter's favour. Since there is no case that intermediate goods were not used in export production, it has to be held that there is no substance in these appeals. They fail and are rejected.

(The operative part of the order already pronounced in Court on 28.10.2003).

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com