

Jaybee Lamination Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-12-2003

Reported in : (2004)(93)ECC562

Judge : P Bajaj, M T K.D.

Appellant : Jaybee Lamination Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal has been directed by the appellants against the impugned order-in-original vide which the Commissioner has confirmed the duty of Rs. 10,02,931/- under Rule 8 of the Customs (Imports of Goods at Concessional Rate of duty for manufacture of excisable goods) Rules, 1996, after denying the benefit of Notification No. 20/99-Cus., dated 28-2-1999 and also imposed penalty of equal amount on them.

2. The learned Counsel has contended that the benefit of the above said notification has been wrongly denied on the ground that the inputs imported at concessional rate of duty under the said notification had been used in excess of the ratio specified under the Exim Policy of the year 1997-2002 in the manufacture of the final products, as the ratio mentioned under the said Exim Policy could not be made applicable to the case of the appellants. He has also contended that there is no allegation of clandestine removal of the imported inputs as such or of the final products manufactured out of the same, in the domestic market.

Therefore, neither duty could be confirmed against the appellants nor any penalty was imposable and the impugned order deserves to be set aside.

3. On the other hand, the learned SDR has reiterated the correctness of the impugned order.

4. We have heard both sides and gone through the record. We find from the record that the appellants are engaged in the manufacture of electrical steel lamination and core assembly falling under sub-heading Nos. 8312.00 and 8504.00 respectively of the Central Excise Tariff Act.

They were registered even under the Customs (Import of Goods for Concessional Rate of Duty for manufacture of the excisable goods) Rules, 1996, and they imported CRGO electrical sheets at concessional rate of customs duty for the manufacture of the core assembly and electrical steel lamination after executing the bond under Notification No. 17/2001-Cus., dated 1-3-2001 (earlier Notification No. 20/99-Cus., dated 28-2-1999). After the import, they had utilized the goods in the manufacture of their final product. The main ground on which they had been denied the benefit of above said notification is that they had used the inputs in excess of the specified ratio in the manufacture of the final product as the wastage shown by them was much more than permissible under the Exim Policy 1997-2002. But, in our view, on this ground the benefit of the notification could not be denied as the above said notification did not prescribe any input/output ratio of the various goods imported at concessional rate of duty and as such any ratio prescribed under the Exim Policy 1997-2002 could not be made applicable to the case of the appellants. The notification only prescribed two conditions; firstly, that the goods imported should be specified goods; and secondly, that the same must have been used for the manufacture of the specified final product. The appellants had fulfilled both these conditions. Therefore, no condition of the notification can be said to have been violated by them. Moreover they imported, as we find from the record, only second hand and defective goods and after rectifying the defects, they utilized the same in the manufacture of their final products. If under these circumstances the wastage had been on a higher side, than the expected wastage if the goods imported had been of prime quality and utilized in the final products,

they cannot be said to have violated the terms of the above said notification under which they were allowed concessional rate of duty. The wastage was bound to occur as the defective portion of the goods could not be used in the manufacture of the final products by the appellants. It is not the case of the Department that the appellants had in any manner clandestinely sold the imported goods as such or cleared the final products manufactured out of the same in a clandestine manner. They had utilized the imported goods for the end-use i.e. for the manufacture of the specified final products.

Therefore, in our view, no duty demand could be raised against them on the grounds of having violated the terms of the above said notification in any manner. Consequently, the impugned order is set aside and the appeal of the appellants is allowed with consequential relief, if any, permissible under the law.

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