

C.C.E. Vs. Maral Overseas Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-17-2003

Reported in : (2004)(166)ELT498TriDel

Judge : A T V.K., P Bajaj

Appellant : C.C.E.

Respondent : Maral Overseas Ltd.

Judgement :

1. This appeal has been preferred by the Revenue against the Order-in-original No. 2/2001 dated 24.1.2002, by which the Commissioner has dropped the demand of duty being time-barred.

2. We heard Ms. Charul Baranwal, learned S.D.R and Sh. B.L.

Narasimhnan, learned Advocate. The learned S.D.R. submitted that the respondents, M/s. Maral Overseas Ltd., a 100% EOU, manufacture cotton yarn, cotton fabrics and garments thereof; that the respondents, besides clearing the goods for export, removed the goods for sale in the Domestic Tariff Area (DTA) ; that during the period from 1.3.97 to 30.1.98, they availed the benefit of concessional rate of duty under Notification No. 8/97-CE dated 1.3.97 on the ground that the cotton yarn, cotton fabrics and garments manufactured and sold by them in DTA were produced wholly from raw-materials manufactured in India; that during the visit to the unit, the Central Excise Officers found that in the

process of manufacture, the respondents were also using wax which are both of imported and indigenous nature; that in the process of manufacture of garments, they were also using imported materials like woven interlining, thread, etc.; that as such they were not eligible for the benefit under Notification No. 8/97-CE; that the question regarding availability of Notification No. 8/97 went up to the Tribunal, which held, vide Final order No. 47/48/2001-D dated 30.01.2001, that wax, etc. are raw-materials and cannot be termed as consumables and the benefit of Notification No. 8/97 would not be available; that however, the matter was remanded to the Commissioner for deciding afresh as to whether the extended period of limitation was invocable. The learned S.D.R., further, submitted that in de novo adjudication, the Commissioner, under the impugned order has held that as the factory was working under physical control and receipt and issuance of imported raw-material was made under the physical supervision of the Inspector posted at the relevant time in the factory, it cannot be said that there has been any material suppression of facts on the part of the respondents; that the commissioner has set aside the demand for the period from 1.3.97 to 30.6.97 as barred by limitation; that the Commissioner has erred in holding that the factory was under physical control; that the Officer of the customs & Central Excise Department is posted for administrative control over the unit in the context of proper implementation of warehousing provisions of the Customs Act, 1962; that the officer posted there had no control over the manufacturing process and use of various raw-materials; that the clearance of final product in DTA for home consumption is under Self Removal Procedure; that in the said Self Removal Procedure, the assessment of the duty liability is done by the manufacturer himself; that it is, therefore, clear that there is no physical supervision of the clearances of excisable goods in the DTA and, therefore, the extended period of limitation is invocable. She also emphasised that merely by the fact that the issue of imported raw-materials from warehouse for manufacture of excusable goods was in the knowledge of the Department, it cannot be concluded that the use of imported raw-materials in the manufacture of excisable goods was meant for sale in DTA; that there was obligation cast on the respondents to make proper declaration and entries in the production register, the invoices and monthly returns; that the fact came to light only when the investigation was conducted by

the Department, which revealed that the respondents have used imported raw-materials in the manufacture of finished products. On the other hand, the learned Advocate submitted that the receipt of raw-materials and removal of finished goods were always in the knowledge of the Department as a regular Central Excise officer was posted in the respondent's factory.

3. We have considered the submissions of both the sides. It is admitted fact that a Central Excise officer is posted in the factory of the respondents for the purpose of removing the imported raw-materials procured by them without payment of duty. It cannot be claimed by the Revenue that the officer posted in the factory, who in fact, was allowing the removal of the imported raw-material from the warehouse, was not aware of the fact that the imported raw-material is used in the manufacture of finished products. He may not be knowing the actual removal of the finished goods for home consumption in DTA. But the Department cannot claim, by stretch of any imagination, that the officer was unaware of the fact that the imported material has been used in the manufacture of the finished goods. Once the officer, who was posted in the factory premises of the respondents, is aware of the fact of use of the imported raw-material, the Department cannot claim that they came to know this only by conducting investigation. It cannot, therefore, be held that the respondents had suppressed the fact of using the imported raw-material from the Department. In view of this, the extended period of limitation is not invocable. Accordingly, we find no merit in the appeal filed by the Revenue, which is rejected.