

Forech India Ltd. Vs. Cce

Forech India Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/33658

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-05-2004

Reported in : (2004)(93)ECC400

Judge : S Kang

Appellant : Forech India Ltd.

Respondent : Cce

Judgement :

1. Appellants filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals).
2. Brief facts of the case are that appellants are engaged in the manufacture of Conveyor Belts, Transmission Belts and appellants were availing the benefit of Modvat credit in respect of the inputs used in their final product on 22.11.2000. The Officers of the Revenue Department visited their factory and it was found that there was a shortage of Dipped Synthetic Fabrics which is used as inputs in their final product. On verification, it was also found that there was excess stock of the finished goods as per their recorded balance. A show cause notice was issued to the appellants for denying the Modvat on Dipped synthetic fabrics and for confiscation of the goods found in excess.

The adjudicating authority confirmed the demand in respect of the duty of Rs. 23040 in respect of Dipped synthetic fabrics which were found excess and the

confiscation of the goods found in excess allowed the excesses on payment of Rs. 2,15,000 and imposed a penalty of Rs. 45,000, Appellants filed an appeal and the Commissioner (Appeals) reduced the redemption fine to Rs. 50,000 and penalty of Rs. 5,000, The contention of the appellant is that the Dipped Synthetic Fabrics which were found short was imported under DEEC Scheme and no CVD duty was paid. Therefore, the appellants had not taken any credit in respect of the Dipped Synthetic Fabric. Therefore, the demand by the Revenue by denying the credit on Dipped Synthetic Fabrics is not sustainable.

3. In respect of the goods found in excess in the factory, the contention of the appellants is that these goods are specifically ordered by their customers and they are only to be cleared to those customers. Therefore, there were no intention on the part of the appellant to evade the duty. The contention pf the appellant is also that the finished goods were also to be exported against the export orders.

4. The contention of the Revenue is that the Dipped Synthetic Fabrics was imported under DEEC Scheme for actual users. As the goods were found short, therefore are not used in the specific purpose and a separate show cause notice is issued regarding this.

5. In respect of the goods found in excess, the Revenue relied upon the Honb'le High Court decision in the case of Kirloskar Brothers Ltd. v. Union of India and Ors., 1988 (34) ELT 30 (Bom.) to submit that when the goods were found unaccounted in the factory, they are liable to confiscation.

6. I find that in respect of shortage pf Dipped Synthetic Fabrics separate proceeding as pending against the appellant, therefore, are not subject-matter of the present adjudication.

7. In respect of the finished goods found in excess to their RG-I record, in view of the decision of the Bombay High Court in the case of Kirloskar Brothers Ltd. v. Union of India and Ors. (Supra), the goods are liable for confiscation. Therefore, the order in respect of confiscation of the goods are upheld and the appeal is dismissed.