# Raju Fabrics Vs. Commissioner of Customs

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**SooperKanoon Citation** : sooperkanoon.com/33713

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

**Decided On :** Jan-08-2004

**Reported in** : (2004)(166)ELT468Tri(Mum.)bai

**Judge** : J Balasundaram

**Appellant** : Raju Fabrics

**Respondent** : Commissioner of Customs

**Judgement** :

1. The brief facts of the case are that on 28.9.2000, the Customs Officers intercepted a Tempo loaded with 188 Cartons weighing 4512 kgs of imported mono filament yarn of 100% polyester at Surat. Based on investigation and statement, show cause notice dated 28.2.01 was issued alleging that the said goods which had been imported duty free by the appellants for use in the manufacture of their export articles were admitted to be diverted in the local market. The notice proposed recovery of duty of Rs. 4,23,554/- in addition to confiscation and penalty, and the notice was adjudicated by the Addl. Commissioner of Customs, Ahmedabad who confiscated the goods with option to redeem the same on payment of fine of Rs. 2 lakhs, confirmed demand as raised in the notice and imposed penalty of Rs. 50,000/-. The lower Appellate authority upheld the adjudication order; hence this appeal.

2. I have heard both sides. The preliminary objection raised by the ld.Coun for the appellants is that the show cause notice and adjudication proceedings are without

jurisdiction as the Addl. Commissioner of Customs, Ahmedabad is not the proper officer for confirming demand of duty short levied and that in the case of 100% E.O.U like the appellants, the proper officer is the Dy. Commissioner with whom the EOU has executed a bond in terms of warehousing provisions under Chapter IX of the Customs Act 1962. Reliance is placed upon the Larger Bench decision in the case of Ferro Alloys Corpn. Ltd, v. CC(Appeals) Bhubneswar [1995(77) E.L.T. 310] in support of his preposition.

3. On perusing the above judgment, I am of the view that the plea has merit and is required to be accepted. The officer having jurisdiction over the export oriented unit has been held to be the proper officer for raising demand for short levy. In the present case, the demand has been raised by the officer having jurisdiction over the Customs house where the goods were seized on an into bond B/E. The officer having jurisdiction over E.O.U where manufacture takes place is the Dy.

Commissioner. I note that although this pleaw raised before the authorities, the Adjudicating authority has not given any finding thereon while the Commissioner(Appeals) has erroneously treated the demand as one under Section 124 of the Customs Act, while the show cause notice and the adjudication order confirmed the demand under the provisions of Section 72 read with Section 28(1) of the Customs Act, 1962. Following the ratio of the Larger Bench decision which is squarely applicable to the present case, I hold that the adjudication order is without jurisdiction. I, therefore, set aside the impugned order which has upheld such adjudication, and allow the appeal on the point of jurisdiction alone, without going into the merits of the case.