

**Koatex Infrastructure Ltd. Vs. Cc**

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

**Decided On :** Apr-02-2004

**Reported in :** (2004)(115)LC695Tri(Delhi)

**Judge :** P Bajaj

**Appellant :** Koatex Infrastructure Ltd.

**Respondent :** Cc

**Judgement :**

1. In this appeal filed by the appellants against the impugned order-in-appeal passed by the Commissioner (Appeals), the issue relates to the availability of the benefit of Notification No. 36/97 dated 1.4.1997 as amended against Special Imprest Licence (SIL) to the appellants in respect of the spares of the machines/machinery imported by them under the DEEC scheme.

2. I have heard both the sides. The perusal of the impugned order shows that the learned Commissioner (Appeals) has denied the benefit of the above said Notification to the appellants for claiming total exemption from payment of customs duty on the ground that the spares were not covered by the said Notification which applied only to the components.

He has followed the ratio of law laid down in this regard by the Division Bench of the Tribunal in Delta Jute and Industries Ltd. v.CCE, Calcutta 7/ wherein such a view had been taken by the Tribunal by placing reliance on the Larger Bench

decision in Hindustan Sanitaryware and Industries v. Collector of Customs . But this Larger Bench decision of the Tribunal in fact, was overruled by the Apex Court when appealed against as reported in 1999 (114) ELT 778, and the Apex Court has ruled that as under: The component is the genus while spare is the species. The spare part though fitted to a machine subsequent to its manufacture, to replace a defective or worn out part, becomes a component of the machine, therefore, is a component part, entitled to the benefit of the exemption Notifications 242/76-Cus. And 112/87-Cus, which were involved in that case.

3. It appears that this decision of the Apex Court escaped the notice of the Calcutta Bench of the Tribunal while deciding the case of Delta Jute & Industries Ltd. (supra) on the basis of the over-ruled judgment of the Larger Bench in Hindustan Sanitaryware & Industries (supra).

Therefore the said judgment of the Tribunal based on the overruled judgment of the Larger Bench of the Tribunal could not be followed by the Commissioner (appeals).

4. In view of the law laid down by the Apex Court in the above referred case Hindustan Sanitary ware & Industries (supra), it must be held that the benefit of the exemption Notification in question referred above had been wrongly denied to the appellants in respect of the goods in question i.e. mandatory spare parts which had been imported by them in order to replace the defective/worn out parts of the machines and which ultimately would become components of the said machines. Similar view had been also taken by the Tribunal in respect of the spares for allowing the benefit of the Notifications involved therein in Jindal Strips Ltd. v. Collector of Customs wherein the spares were to be used in future for replacing used/worn out bricks and in Shiv Industries Ltd. v. CCE, Coimbatore 2002 (101) ECR 165 wherein spares for the turbunes to be used in the future in the machines made for manufacture of electricity, were involved.

5. Even the Board had also issued a Circular No. 525/21/2000-CX dated 7.4.2000 on the strength of the judgment rendered by the Apex Court in Hindustan Sanitaryware and Industries (supra) for allowing the benefit of the above Notification in respect of spares.

6. In view of the discussion made above, the impugned order of the Commissioner (appeals) cannot be legally sustained and is set aside.

The appeal of the appellants is allowed with consequential relief, if any, permissible under the law.

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