

**Galaxy Garments Vs. Commr. of Cus. and Central Excise**

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**SooperKanoon Citation :** [sooperkanoon.com/39005](http://sooperkanoon.com/39005)

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

**Decided On :** May-09-2005

**Reported in :** (2005)(187)ELT213Tri(Mum.)bai

**Judge :** J Balasundaram, Vice-, A M Moheb

**Appellant :** Galaxy Garments

**Respondent :** Commr. of Cus. and Central Excise

**Judgement :**

1. After hearing both sides for some time on the application for waiver of pre-deposit of duty of Rs. 29,51,081/- and penalty of Rs. 5,000/-, we found that it was possible to decide the appeal itself at this stage and hence proceed to do so with the consent of both sides, after waiving pre-deposit.

2. The appellant herein is a 100% EOU. The case of the department is that they are engaged in the manufacture, under bond, of readymade garments such as ladies midi skirt, scarves etc. falling under sub-heading 6101.00 of the schedule to the Central Excise Tariff Act, 1985. They had removed excisable goods involving duty of Rs. 48,70,769/- during the period from November 2000 to March 2003 for export at nil rate of duty under ARE-1's. The goods had been exported to merchant exporter. In respect of a demand of Rs. 19,19,688/- it has been confirmed on the ground that it was the merchant exporter who was required to file proof of export. However, the present demand has been confirmed against the appellants who had executed B-17 bond and, therefore, they were liable to

produce proof of export which they failed to do.

3. On hearing both sides, we do not see any substance in the plea of the appellants that even in the case of this demand, it is the merchant exporter who is required to discharge the burden of showing that the goods had been exported. The appellants have furnished B-17 bond and they are required to produce proof of export in case they wish to avail of exemption from payment of duty. We however see force in the plea that their claim of benefit of exemption to the goods in terms of Notification 15/2002 requires to be considered. The notification grants exemption from payment of central excise duty (show cause notice to the appellants herein proposes recovery of central excise duty under Section 11A of the Central Excise Act) to several kinds of woven fabrics, knitted or crocheted fabrics and articles of apparel knitted or crocheted, subject to the condition that the inputs are duty paid and that no credit of duty paid on inputs or capital goods has been taken. The goods in question on which demand has been confirmed are goods falling under Heading 61.01 which is exempted in terms of Sr. No.14 of the table to the notification above mentioned. Since the conditions set out as per condition No. 4 of the notification relevant to Sr. No. 14 of the table to the notification have not been examined and found to have been complied with by the appellants, as this is a plea which is being raised before the Tribunal for the first time, the interest of justice requires that the Commissioner (Appeals), to whom we remain the matter, considers the claim of the appellants for the eligibility to exemption in terms of the notification. He shall examine this issue and pass fresh orders after extending a reasonable opportunity to the appellants of being heard and to produce such evidence whether oral or documentary to support their claim to the benefit of notification.

5. The appellants are at liberty to raise all relevant legal issues before the Commissioner (Appeals).

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