

Beekay Hosiery Industries Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-18-2005

Reported in : (2005)(188)ELT301TriDel

Judge : N T C.N.B., P Bajaj

Appellant : Beekay Hosiery Industries

Respondent : Commissioner of Customs

Judgement :

1. The appellant imported 34 socks knitting machines and cleared them on payment of duty. Subsequently, they claimed refund of about Rs. 13 lakhs of the customs duty already paid on the ground that the goods in question are entitled to a partial exemption under Notification No.17/2001-Cus., dated 1-3-2001. Under the impugned order, this claim remains rejected with the observation that in the case under consideration, the duty paid on the socks knitting machines is indirectly loaded on the finished products which are sold to the purchasers. Therefore, the burden of duty has been indirectly passed on to the purchaser of the finished product and refund claim is definitely hit by the doctrine of unjust enrichment as laid down by the Apex Court.

2. The contention of the appellant is that the finding of the Commissioner relating to the indirect passing on of the duty burden is contrary to the facts on records and is required to be set aside.

Specific reliance in this connection is being placed on two certificates on record. The certificate from S. Chander & Associates, Cost Accountants states that the verification of the accounts of the appellant has shown that cost of the machines "to an extent of Rs. 12,99,442/- as receivable from the Customs Department on account of excess duty paid" has not been included by M/s. Beekay Hosiery Industries. Another report from Mohan L. Jain & Co., Chartered Accountants has certified that "As per the books of accounts of M/s.

Beekay Hosiery Industries, A-125/1, Wazirpur Industrial Area, Delhi-110052, we certify that the debit balance of Rs. 12,99,442/- stands in the Customs duty refund account as on 31st August 2004".

Learned Counsel for the appellants has submitted that in an identical case of C.C., Air Cargo Unit, New Delhi v. Maruti Udyog Ltd. - , the Tribunal upheld the granting of refund.

3. We have heard the learned DR also. It is his contention that the decision of the Apex Court in the case of Union of India v. Solar Pesticide Pvt. Ltd. -2000 (116) E.L.T. 401 (S.C.) equally applies to the capital goods also and for that reason, the refund is not permissible.

4. Passing on of duty is a matter of fact. In the present case, two certificates from Cost Accountants and Chartered Accountants clearly show that the duty on -the machines "had not been passed on". Thus, the requirement under the law that refund is permissible only in a case where duty already paid had not been passed on, stands satisfied. The Commissioner (Appeals) had denied the refund only on a presumption that duty would have been indirectly passed on. Since the factual position goes contrary to this finding, the order is not sustain-able. The impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

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