Prime Poly Weave Ltd. Vs. Commissioner of Central Excise

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SooperKanoon Citation : sooperkanoon.com/39592

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-05-2005

Reported in : (2005)(189)ELT208Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Prime Poly Weave Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. After hearing both sides and finding, that the core issue in these appeals filed by 100% EOU's against similar order and dispute as regards the eligibility of the clearances made out of the EOU is of Polyster yarn & Gray fabric waste arising on the EOUs, to benefit of Notification 8/97 or 13/98 and 2/95 denied by the Commissioner, and only on E/3049/02 there is an additional charge of fabrics, the final product being found short and thus not accounted and duty demands made thereon, there appeals are being disposed by their common order.

2. (a) The learned Advocate submits that the denial to notification 8/97 or/and 13/98 without going into the details of whether the raw material from which the subject waste arose was India or imported.

The claim is that it is Indian raw material, even in these cases where the same is received on transfer from other 100% EOU's. The Advocate submits that there receipts from other 100% EOU's have been considered as imported or made from imported material where as the facts on verification would have revealed a contrary position. A specific plea has been made before us that the said clearances would be within the prescribed limits of and would be satisfying the criteria for claim of exemption under Notifications 8/95 and 13/98, if that was considered & verified.

(b) Reliance is placed on the decision giving International and the other catena of decisions thereafter (c) The decision in the case of Sanju Silk Mills Ltd. and OPAL fabrics was distinguished relied upon by the Id. DR to deny the benefit of removal on basis of deemed exports after leading us through the Exim Policy Provisions of paras 9.9 & 9.10, which speak of 'sales of domestic tariff area' & 'supplies the EOU' as well as the Appendix 42 was read out. These submissions when considered would indicate that the policy provisions and concept of sale to DTA under para 9.9 cannot be equated and merged and applied to supplies made from an EOU for various purposes under para 9.10.

Infact we find that supplies effected under para 9.10 would be eligible to be reckoned in calculating the DTA sale quota of 5% or & 50% as applicable. We agree, the size cannot be equated with the offspring. We also find that even NEFP calculations could be reckoned with the clearances of supplies made under para 9.10. We find force in the agreement advanced by the Id. Advocate that Sanju Silk Mills Ltd. & Opal Fabrics were decisions arrived at without considering these essential stipulations of Exim Policy provisions. In view of the same, we refrain from following the same. We find no reason to depart from the Ginni International decisions and ignore (d) We however do not and cannot hold the orders as arrived, without referring to the source of the raw materials from which the waste arose. If on verification, it is established that it arose from Indian raw material it would be entitled to benefit of Notification 8/97 & 13/98 as per the period of clearance as applicable. If it arise from the imported material wholly or partially than application of notification 2/95 has to be considered for clearance under paras as presented therein & for other clearances duty has to be separately determined & for this matter the orders are to be set aside & matters remitted for de novo decisions after hearing the appellants.

(e) Since we are remanding the matter, the plea of eligibility of other Notification 125/84 in the facts herein and or application of the decision in case of Morarji Brahmarani A/757-761/WZB/2005 C-III/20-5-05 on the facts herein; is kept open to be applied, including the plea of demand made under Customs Act, 1962 on the notice, as we find no reason not to demand duties under Customs Act, 1962 to imported material in the EOU's which are Section 65 manufacturing bonds also.

(f) In view of the findings herein, we would remand the question of shortages & accounting thereof & consequent duties, if any, and penalties in this case also open in the now being ordered for both sides de novo proceedings.