Volant Textile Mills Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-22-2005

Reported in : (2005)(190)ELT18Tri(Mum.)bai

Judge : K Kumar, S T Chittaranjan

Appellant : Volant Textile Mills Ltd.

Respondent : Cce

Judgement :

2. The appellants have used machinery imported duty free for manufacture of goods for clearance in the Domestic Tariff Area in their 100% EOU without obtaining permission of either the Development Commissioner or the Excise authorities.

3. Shri V.S.Nankani, Ld. Advocate appearing for the appellants, fairly concedes that there is no case law on the subject, but argues that there is no bar on use of the facilities of a 100% EOU for producing goods for Domestic Tariff Area.

4. He further states that the inputs, which were received duty free, have subsequently been charged to duty by the Excise authorities. It is also his contention that even if duty is to be paid on the impugned goods, it has to be correctly calculated in terms of applicable exemption notification and not at the tariff rate. According to him, at the most, the duty liability will be about Rs. 15 lakhs and not Rs. 1,51,52,762/- as wrongly determined by the adjudicating

Commissioner.

5. We have heard Shri C.Lama, Ld. JDR, who has been recently posted in the Tribunal. He is not in a position to effectively argue the Department's case, being new to the work. We understand that as a part of the cadre review, new posts at the level of Commissioners, have been created and one officer in the rank of Commissioner has been posted as JCDR for every Bench of the Tribunal. We have not, however, found the JCDR attached to the Bench appearing in any single case or arguing any matter. Particularly, when cases involving high revenue such as this are listed for hearing or the appeal takes a totally new line of argument, it does not behove the senior officers in the grade of Commissioners to allow such cases to be argued by very junior departmental representatives newly posted, instead of they themselves arguing such matters. The Bench requires to be assisted by both sides, so that we can arrive at a proper decision. If the JCDRs are not to take any interest in their work and not argue cases in the Tribunal, we do not see any reason for the Government creating so many additional posts at the level of Commissioners.

6. After considering the submissions, prima facie, we are unable to accept the appellants' plea that 100% EOU can use its facilities, including machinery imported duty free, for domestic production without the approval of the Development Commissioner. In this regard, we note that Explanation 2 to Section 3 of the Central Excise Act, 1944 defines a 100% EOU with reference to the provisions of Industries (Development & Regulation) Act, 1951 and such units cannot, therefore, be allowed to operate outside the scheme and approval given by the appropriate authorities. At the same time, prima facie, the appellants have merit in their arguments that even if the clearances for DTA are held to be illegal, the duty demand has to be in terms of the effective rate and not tariff rate. Accordingly, we direct the appellants to pre-deposit an amount of Rs. 15,00,000/- (Rupees fifteen lakhs only) by 31.10.2005 and report compliance on 02.11.2005. Subject to compliance with the above direction, the pre-deposit of the balance amount shall remain waived during pendency of the appeal. We also direct the Jt. JCDR to appear in cases of this type involving heavy stake and argue the matter before the Bench in future.