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**Le Designco Vs. Commissioner of Customs**

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**SooperKanoon Citation** : sooperkanoon.com/40527

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

**Decided On :** Oct-13-2005

**Judge** : S Kang, Vice-, S T T.V.

**Appellant** : Le Designco

**Respondent** : Commissioner of Customs

**Judgement** :

1. Heard both sides. The appellant filed these appeals against the common adjudication order whereby the demand of Rs. 1,33,17,085/- was confirmed and personal penalty of the equal amount was imposed on the firm.

2. Brief facts of the case are that M/s. Le Designco (firm) imported of Mulberry raw silk and availed the benefit of Notification Nos.

204/92-Cus. and 80/95-Cus. on the condition that the imported Mulberry raw silk is use for in the manufacture of garments and which are to be exported. The case of the revenue is that the appellant failed to fulfil the export obligation, therefore, they are not entitled for the benefit of above-mentioned notifications. Custom duty was demanded in respect of the Mulberry raw silk imported by the appellant.

3. The contention of the appellant is that they filed a detailed reply to the SCN and raised certain issues which were not considered by the adjudicating authority and effective opportunity of hearing was not granted by the adjudicating authority before passing the impugned order. The contention is that as per the Annexures L

to Q, the Revenue admitted that certain quantity of imported silk was used in the manufacture of specified goods which were exported. The contention is that the benefit of notifications in respect of Mulberry raw silk contained in the exported goods are to be allowed to the appellant while determining the demand of duty and this benefit has not been allowed by the adjudicating authority and demand was confirmed in respect of the total quantity of Mulberry raw silk imported by availing the benefit of the above-mentioned notifications which is not sustainable.

4. The contention of the revenue is that the appellant availed the benefit of notifications and had not fulfilled the condition of notifications. Mulberry raw silk which was imported under the notification without payment of duty is not used in the manufacture of specified goods, therefore, they are liable to pay duty on raw silk.

The contention is that the adjudicating authority granted an opportunity for personal hearing and the appellant had not availed the opportunity. Therefore, now it cannot be said that the order was passed in violation of the principles of natural justice.

5. In the present case, the Mulberry raw silk was imported by availing the benefit of Notification Nos. 204/92-Cus. and 80/95-Cus. A SCN was issued wherein it was mentioned the quantity of raw silk contents used in the specified goods as per Central Silk Board Certificate which was less than the quantity claimed by the appellant before Jt. DGFT. The Annexures L to Q to the SCN contains the quantity of raw silk contents as per CSBC in the goods exported. The condition of the notifications is that in case the importer do not fulfil the obligation he has to pay on demand of equal amount or duly leviable but for the exemption, on the imported material in respect of which the conditions specified in these notifications have not been complied with. In the present case, the appellants are not disputing the quantities of raw silk contents as per CSBC (Central Silk Board Certificate) and the quantities are mentioned in the Annexures to the SCN, therefore, the appellants are entitled for the exemption in respect of the quantity of raw silk which has been used in the manufacture of specified goods as per CSBC which was exported. The Annexures to SCN mentioned numerous shipping bills vide which the export of

specified goods were made and the quantity of raw silk contents as per CSBC is mentioned in the specified goods. As per the conditions of notifications, the appellants are entitled for the benefit of notifications in respect of quantity of raw silk which is used in the manufacture of specified goods as per CSBC which has been exported. In the present case, the duty was confirmed in respect of whole of the quantity of silk imported by the appellant, therefore, the duty is to be re-quantified after taking into consideration the quantity of imported material used in the manufacture of specified goods as per CSBC. The impugned order is set aside and the matter is remanded to the adjudicating authority to re-quantify the duty and after doing so, the issue in respect of penalties is also to be re-determined by the adjudicating authority. It is, however, made clear that the amount already deposited by the appellant will remain with the Revenue during the pendency of the proceedings before the adjudicating authority.

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