

**Daffodils International (P) Ltd. Vs. C.C.E.**

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**SooperKanoon Citation :** [sooperkanoon.com/40655](http://sooperkanoon.com/40655)

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

**Decided On :** Oct-27-2005

**Judge :** S Kang, Vice

**Appellant :** Daffodils International (P) Ltd.

**Respondent :** C.C.E.

**Judgement :**

1. Heard both sides. The appellant filed this appeal against the order-in- appeal passed by the Commissioner(Appeals) whereby demand of Rs.206551/- was confirmed.

2. Brief facts of the case are that the appellant made export of certain Leather Jackets and part consignment was re-imported to remove some defects and re-import was made under Notification 158/95-Cus dt.14.11.95 and as per the provisions of Notification, the goods re-imported into India are to be re-exported within six months or such extended period not exceeding the further period of six months as Commissioner of Customs may extend. The appellant asked for extension of the period for re-export and Commissioner allowed extension for one year. There is a delay of exporting the goods of four months beyond the period which was allowed by the Commissioner of Customs. A SCN was issued asking for Customs Duty on the goods on the ground that as the re-export was made after one year, therefore, the appellants are liable to pay duty. The contention of the appellant is that the goods were re-exported. This fact was not disputed by the Revenue and the Revenue on the request of the appellant also recommended for

extension of bank guarantee of one year. The contention is as on the recommendation of Customs authorities the bank guarantee extended by the bank. At the time of re-export, no objection was raised and goods were allowed to re-export, therefore, the demand is not sustainable.

3. The appellant relied upon the decision of the Tribunal in the case of IOC Ltd. v. CCE, Calcutta-II reported in 2004 (178) ELT. 834 to submit that the conditions of the notification are procedural and condonable in a situation when the export is not disputed by the revenue.

4. The contention of the revenue is that the goods were re-exported into India under the notification and notification provides re-export of the goods within six months or further six months as extended by the Commissioner of Customs. In fact that goods were re-exported after one year four months i.e. beyond the period as provided under the notification, The revenue relied upon the decision of the Hon'ble Supreme Court in the case of UOI v. Kirloskar Pneumatic Co. . The contention is that the period provided under the statute cannot be extended even under Article 226 of the constitution by the Hon'ble High Court.

5. In the present case undisputed facts are that the appellant re-exported goods after one year and four months. As per provisions of the notification No.158/95-Cus, the goods are to be re-exported within six months or such extended period not exceeding a further period of six months by the Commissioner of Customs. The goods were not re-exported within the period as prescribed under the notification.

Therefore, in view of the decision of the Hon'ble Supreme Court in the case of UOI v. Kirloskar Pneumatics Co. (Supra) where the Supreme Court held that even under the Article 226 of the constitution, Hon'ble High Court cannot extend the period of limitation as provided under the notification. I find no infirmity in the impugned order, the appeal is dismissed.