

The Commissioner of Customs Vs. Raln Calcining Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Nov-22-2006

Judge : J T T.K., S Peeran

Appellant : The Commissioner of Customs

Respondent : Raln Calcining Ltd.

Judgement :

1. This Revenue's appeal arises from Order-in-Original No. 09/2003 dated 15.9.2003 by which the Commissioner in his detailed order has dropped the proceedings initiated by the Revenue in terms of the Show Cause Notice No. 510/9/2001-Prev. Bonds (RCL) dated 12.12.2001. The assessee were manufacturing 'Calcined Petroleum Coke'. They were 100% Export Oriented Unit (E.O.U.). They also generated electricity as permitted in the Letter of Permission by the Secretariate of Industrial Approvals, Government of India and supplied to the Andhra Pradesh State Electricity Board (APSEB). A portion of the final products, viz.

Calcined Petroleum Coke and Gypsum were sold in the Domestic Tariff Area after payment of proper duties and after getting permission from the Development Commissioner. The Revenue after a detailed investigation alleged that the assessee did not inform the Department regarding the sale of power in Domestic Tariff Area without payment of duty and of the use of the inputs and capital goods used in the generation of power at any point of time. The details of charges were brought out in the show cause notice and against these charges, the assessee

had filed a detailed reply relying on several rulings and the Board's Circular and had taken substantial grounds to urge that no duty can be raised. They also contended that the Commissioner has no jurisdiction to raise the demand as the Development Commissioner has granted permission to generate electricity outside the factory. They also raised the plea of the time bar. The Commissioner after satisfied all the grounds has dropped the proceedings in the impugned order. The impugned order is challenged by the Revenue by filing this appeal.

2. The learned JDR reiterates the 'Grounds of the Appeal' and prays for confirming the demands raised.

3. The learned Counsel submits that in an identical matter in the case of M/s Sanghi Spinners (I) Ltd. the very issue was considered by this Bench by Final Order No. 1090/2006 dated 22.6.2006. The Tribunal after a detailed consideration has upheld the Commissioner's order dropping the demands. He filed copy of the cited Final Order. He also relies on the following Tribunal's rulings to support his plea that the Customs Department cannot take a view contrary to that of the Development Commissioner in interpreting EXIM Policy: Amitex Silk Mills (P) Ltd. v. CCE, Surat He also files copy of the several Apex Court judgments. The learned Counsel submits that the appeal itself is not maintainable for the reason that the findings recorded by the Commissioner pertaining to time bar has not been challenged in their own grounds. No purpose will be served by hearing the appeal as the findings of the Commissioner on time bar has not been challenged and the same has been confirmed. On this ground, he refers to the following rulings: He further submits that the utilization of the entire quantity of raw material has to be considered as used in the manufacture of final products. On this point he relies on the following rulings: Swadeshi Polytex Ltd. v. Collector of Central Excise (b) Multimetals Ltd. v. Asst. Collector, C. Ex. 1991 (57) ELT 209 (S.C.) Union of India v. Indian Aluminium Co. Ltd. (d) Acme Metal Industries Pvt Ltd. v. S.S. Pathak, The Inspector, C.Ex and Ors.

Further he submits that no duty can be raised on imported consumables used in generation of power sold outside. He relies on the following rulings: 4. We have carefully considered the submissions made by both the sides and perused the

impugned order and the grounds of appeal and various rulings cited by the learned Counsel. The findings rendered by the Commissioner on time bar have not been challenged by the Revenue. Hence the findings have become final. No purpose will be served in hearing the matter on merits as no demand can be confirmed in the proceedings as all demands are barred by time as held in the impugned order and this finding has not been challenged in this appeal. Furthermore, the same issue had come up for consideration before this Bench and this Bench by Final Order No. 1090/2006 dated 22.06.2006 has dismissed the Revenue's appeal by upholding the Commissioner's order dropping the proceedings. The Bench has relied on large number of rulings to hold that the Customs Department cannot reopen the issue which is settled by the Development Commissioner. We also notice that the appellant is relying on large number of rulings pertain to utilization of quantity of raw material to be considered as used in the manufacture. This plea has been supported by the rulings cited supra. Furthermore, there are few judgments in support of the appellant's plea that no duty can be demanded on imported consumables used in generation of power which were sold outside the factory. We do not find any merit in the Revenue's appeal and the same is rejected.

5. In the Cross Objection, the appellants have challenged the operation of the Commissioner's order confirming the demands. We are of the considered opinion that ratio of the cited judgments applies to the facts of the case and therefore, confirming demand is not justified.

The demand is set aside and the Cross Objection filed by the appellants is allowed with consequential relief, if any.

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