

Bajaj Plastics Ltd. Vs. Commissioner of Customs (Ep)

Bajaj Plastics Ltd. Vs. Commissioner of Customs (Ep)

SooperKanoon Citation : sooperkanoon.com/44513

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-04-2007

Judge : J Balasundaram, Vice-, A T K.K.

Appellant : Bajaj Plastics Ltd.

Respondent : Commissioner of Customs (Ep)

Judgement :

1. The applicants in these cases have been issued three advance licenses on the basis of which they have imported poly propylene granules within the terms of the licenses. It is the revenue's contention that the licenses were obtained by inflating the international value of the inputs in their VABAL application when compared with the then international prices and accordingly show cause notices were issued to them demanding duty on the excess quantity so imported on account of inflation in value.

2. Learned advocate for the applicants submits that in terms of para 49 of the Exim policy of year 1992-1997 they had a flexibility of 20% both in terms of quantity and the value of the sensitive item subject to the condition that the overall CIF value of the licenses should not be exceeded. They have not violated any of this condition as they have imported 20% extra in quantity only but the value of the imports are within the overall value of licence. If the department felt that they have inflated the value of the inputs, it should have got the licenses amended by the DGFT authorities who only are competent to do that and in this regard they also referred to the circular issued by the Board vide Circular No. 23/96 dated 19-4-1996

wherein similar clarification has been given and accordingly pleaded that as long as the licence has not been amended they cannot be denied the benefit of exemption in terms of the licenses.

3. We have heard both sides. We find that in all the three cases the appellants have complied with the terms of licenses and since para 49 of the Exim policy prevailing during the relevant time allowed flexibility of 20% both in value and quantity subject to the condition that in respect of sensitive item the overall CIF value of the advance licence should not be exceeded, we hold that there has been prima facie no violation of condition of the licence. As regards the inflated value in their VABAL application for licence, the only course available to the revenue was to get the licence amended by the DGFT authorities who only are competent authorities as is also supported by the Board's Circular No. 23/96 - Cus cited supra and accordingly we hold that the applicants have been able to make out a prima facie case in their favour so as to call for complete waiver of pre-deposit of duty, interest and penalty imposed on them. We, accordingly waive the pre-deposit of duty, interest and penalty imposed on them and stay recovery thereof till disposal of the appeals.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com