

Dean Calenders Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Ahmedabad

Decided On : Jul-27-2007

Judge : V T M.

Appellant : Dean Calenders

Respondent : Cce

Judgement :

1. This is an appeal against the order of the Commissioner(Appeals) No.399/2005(Ahd-I)(AA/A-IV) dt. 17/11/2005 by which the Commissioner(Appeals) has set aside the order of the Original Authority granting refund of Rs. 52,005/- being unutilized credit of duty relating to inputs used in excisable goods exported.

a. The appellant procured grey fabrics from the market on which no duty is payable and took deemed credit in terms of Notification No. 6/2002-CE(NT) dt. 1/3/2002.

b. The appellant exported part of the finished goods and therefore could not utilize the entire deemed credit taken by them and claimed the refund of such unutilized credit which was allowed by the Original Authority by his order dt.28/3/2003.

c. On appeal by the Department, the Commissioner (Appeals) held that the grey fabrics are not declared in the notification No. 6/2002 as eligible inputs for availing deemed credit and hence denied the refund by setting aside the order of the Original Authority.

4. The Id. Advocate for the appellant admits that the grey fabrics were not dutiable during relevant time, but claims the deemed credit is eligible in terms of Notification No. 6/2002 in view of the fact that during the manufacture such grey fabrics duty paid inputs like yarn, chemicals, etc have been used. In this context, he relies on the Board's circular No. 243/77/96-CX dt.3/9/96 in the context of Notification No. 29/96-CE(NT) dt.3/9/96, wherein it has been clearly mentioned that deemed credit allowed is in lieu of duty paid on fabrics, yarns, dyes, chemicals and packing materials. He also relied on the CBEC's circular No. 702/ 18/2003-CX dt. 13/3/2003 issued wherein it has been reiterated that even when grey fabrics did not pay duty, the deemed credit would be available in the light of the fact that duty paid inputs are contained in the grey fabrics.

5. In the light of the above clarifications of the Board, I hold that the deemed credit provided under Notification No. 6/2002 has taken into account duty incidence on a wide range of inputs used in the grey fabrics even when the grey fabrics are not dutiable as such. Therefore, the appeal deserves to be allowed.

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