

2013 (290) E.L.T. 543 (Bom.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
J.P. Devadhar and A.R. Joshi, JJ.

COMMR. OF C. EX. & CUS., NASHIK

Versus

RISHABH INSTRUMENTS PVT. LTD.

Central Excise Appeal No. 3 of 2012, decided on 8-2-2012

Export Oriented Unit - DTA sales - Para 9.24 of Handbook of Procedures entitles EOU to have DTA clearances in totality, and not with reference to specific items, which means that all manufactured goods which were exported can be cleared to DTA to the extent permitted under policy - In that view, Department's plea that impugned permission was with reference to specific items only, and other goods could not be sold in DTA, rejected. [para 3]

Appeal dismissed

CASES CITED

Commissioner v. Futura Polymers Ltd. — Civil Appeal No. 4522 of 2003, decided on 12-10-2011 — Applied [Para 2]
Jain Grani Marmo Pvt. Ltd. v. Commissioner — 2009 (246) E.L.T. 754 (Tribunal) — Referred [Para 1]

DEPARTMENTAL CLARIFICATIONS CITED

C.B.E. & C. Circular No. 7/2006-Cus., dated 13-1-2006..... [Para 1]
C.B.E. & C. Circular No. 12/2008-Cus., dated 24-7-2008..... [Para 1]

REPRESENTED BY : S/Shri Pradeep S. Jetly with Jitendra B. Mishra, for the Appellant.
S/Shri V. Shridharan, Sr. Counsel with Prakash Shah, i/by P.D.S. Legal, for the Respondent.

[Order]. - P.C. : The following questions of law are raised by the Revenue in this appeal :-

- (a) Whether the Hon'ble CESTAT was justified in holding that the duty has to be computed on the basis of 50% of each of the duties of the customs and not on the basis of 50% of the aggregated duties of the customs, and thereby allowing the appeal filed by the respondents?
- (b) Whether the CESTAT has failed to consider the C.B.E. & C's Circular No. 12/2008-Cus., dated 24-7-2008 wherein it is clarified that the goods sold by an EOU into DTA must be similar to goods exported, within the meaning of the term similar as defined in the Board's Circular no. 7/2006-Cus., dated 13-1-2006?
- (c) Whether the Tribunal has failed to appreciate the ratio laid down in the Order Nos. C/84-85/2009(PB), dated 17-2-2009 in appeal Nos. C/472-473/2006, reported in 2009 (246) E.L.T. 754 (Tri.-Del.) in case of *M/s. Grani Marmo Pvt. Ltd. v. Commissioner, Central Excise, Jaipur-II*.

2. As regards the first question is concerned, Counsel for the parties state that the said question is covered against the Revenue and in favour of the assessee by the decision of the Apex Court in the case of *Commissioner of Central Excise, Chennai-1 v. M/s. Futura Polymers Ltd.* in Civil Appeal No. 4522 of 2003 dated 12 October, 2011. Hence, the first question cannot be entertained.

3. As regards question Nos. (b) and (c) are concerned, the relevant facts are that the assessee is a 100% Export-Oriented Unit (for short "EOU"). It is not in dispute that the Development Commissioner, SEEPZ, Mumbai had permitted the assessee to manufacture panel meters, digital multimeters, insulation testers, transducers, energy meters and electrical/electronics measuring instruments, spares and accessories. It is also not in dispute that the assessee was entitled to sell these products in Domestic Tariff Area (for short "DTA") to the extent permitted under the Government policy. According to the Revenue, specific permission to sell the goods in DTA was given only in respect of panel meters and, therefore, the clearances other than the panel meters such as multimeters, transducers and accessories to the DTA would not be eligible for the benefit of concessional rate of duty under Notification No. 2 of 1995 dated 4-1-1995. Accordingly, an order was passed against the assessee.

4. Challenging the aforesaid order, the assessee filed an appeal before the CESTAT. During the pendency of the appeal, a clarification was sought and the Development Commissioner's office vide their letter dated 3rd December, 2010 clarified that as per Para 9.24 of the Handbook of Procedures, the assessee was entitled to clear the goods manufactured by it in totality to the D.T.A. and not with reference to specific items. In other words, the Development Commissioner's Office clarified that as per the policy all manufactured goods which are exported can be cleared to the DTA to the extent permitted under the policy. In the light of the clarification given by the Development Commissioner, the CESTAT allowed the claim of the assessee and held that the concessional rate of duty is available in respect of multimeters, insulation testers, transducers, energy meters and electrical/electronics measuring instruments, spares and accessories. Since the decision of the CESTAT is based on the clarification given by the office of the Development Commissioner, no fault can be found with the decision of the CESTAT to the effect that the assessee was entitled to the benefit of the Notification No. 2 of 1995 in respect of multimeters, transducers and accessories, etc. Thus, question Nos. (b) and (c) also cannot be entertained.

5. Accordingly, the appeal is dismissed with no order as to costs.