

2013 (288) E.L.T. 341 (Kar.)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
N. Kumar and Ravi Malimath, JJ.

COMMISSIONER OF CUSTOMS, BANGALORE

Versus

NATURAL STONE EXPORTS LTD.

CSTA No. 29 of 2006, decided on 3-11-2011

EXIM - EOU - Achieving 64% of NFEP of goods other than capital goods - It is not liable to 100% of duty foregone on imported goods - Liability to duty is in proportion to non-achieved portion of NFE, and for this purpose capital and other goods have to be separated. [para 2]

Appeal dismissed

DEPARTMENTAL CLARIFICATION CITED

C.B.E. & C. Circular No. 12/2008, dated 24-7-2008..... [Para 2]

REPRESENTED BY : Shri K.N. Mohan, Advocate, for the Appellant.

[Judgment per : N. Kumar, J.] - The revenue has preferred this appeal challenging the order passed by the Tribunal [2006 (198) E.L.T. 440 (Tribunal)] which has held that the assessee is liable to pay Customs duty only in respect of the goods imported but not exported and also against the order remanding the matter to the Original Authority to quantify the duty on the goods other than the capital goods which are imported indigenously procured duty free but not utilized in the manufacture of articles for export.

2. The material on record discloses that the assessee which is a 100% EOU has achieved 64% of NFEP goods other than capital goods (raw materials, consumables, etc.) which are not utilized in the manufacture of articles for export is definitely liable for appropriate duty. To the extent the assessee has achieved export, no duty is leviable. Therefore, the Assessing Authority was not justified in levying duty on 100% of the goods which is imported. This position is also clear from the Circular No. 12/2008, dated 24-7-2008 issued by the Central Board of Excise and Customs, New Delhi, where it has been explained that in case the unit has not achieved positive NFE, the duty foregone at the time of import shall be paid on such value of goods in proportion to the non-achieved portion of NFE. Therefore, the finding recorded by the Tribunal is in consonance with the aforesaid circular and in accordance with law and that cannot be found fault with. Since the adjudicating order has treated both the capital goods and other goods on the same putting, the Tribunal was justified in remanding the case to the Original Authority for quantification of duty on the goods other than capital goods which are imported/indigenously procured duty free but not utilized in the manufacture of articles for export.

3. In these circumstances, the Tribunal was justified in setting aside the order imposing penalty also. Therefore, we do not see any merit in this appeal. Accordingly, it is dismissed.

