(2011) 07 KL CK 0031

In the High Court Of Kerala

Case No : CUS. A. No. 3 of 2010

Commissioner of Customs APPELLANT

Vs

Kitex Garments RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Citation : (2012) 284 ELT 167

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Thomas Mathew Nellimoottil, for the Appellant; P.R. Venketesh and P.R. Raja, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—Heard learned Standing Counsel for the appellant and learned counsel for the respondent. The question raised is whether the CESTAT [2010 (249) E.L.T. 414 (Tri. - Bang.)] is justified in holding that the respondent is entitled to duty exemption on import of parts of buttons used for making garments for export. Admittedly the claim is under Notification 21/2002 (Customs), dated 1-3-2002 granting exemption from import duty on tags, labels, stickers, belts, buttons or hangers imported by bona fide exporters. The Department''s case is that the respondent has not imported the buttons in full but imported only parts of buttons, which are not entitled to exemption. Learned counsel for the respondent produced before the Tribunal the parts of button used in the making of garments. The Tribunal on being convinced that the parts of button make up full button when fixed on the garment upheld the respondent''s eligibility for exemption.

2. During hearing of this appeal, the respondent''s counsel produced before us the parts of button imported, and on examining the same we notice that four parts of button make a full operational press button on the cloth. In fact, the button operationally consists of two parts, one male and the other female. Each such part is made up of two items, which are riveted from both sides of the cloth

to make one part. The corresponding one is fixed on other part of the cloth, which also has two parts and the fixing is done by (sic) Obviously press button as such cannot be fixed on cloth but only on being fixed on cloths the four parts fixed make into an operational press button. Therefore, in our view the Tribunal rightly assigned the meaning of buttons in the notification covering parts of buttons, which when fixed on the garment turn to be full button. The Department has no case that the respondent has not utilised the parts of buttons while making the garments for use as full buttons in the garments so made. So much so, benefit of notification cannot be declined to the assessee merely because import was button in parts and not in made up form. In our view notification has to be interpreted in such a way as to achieve it''s objective and not to defeat it. Duty free import of various items are permitted to help exporters to sell their products at competitive prices in the international market. We, therefore, uphold the order of the Tribunal and dismiss the departmental appeal.