(2009) 10 SHI CK 0052

In the High Court Of Himachal Pradesh

Commr. of C. Ex. APPELLANT

Vs

Suraj Industries Ltd. RESPONDENT

Date of Decision : 14-10-2009

Acts Referred:

Citation : (2010) 254 ELT 72

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal has been admitted on the following question of law:

Whether the benefit of concessional rate of duty is admissible on the imported goods which have not been used or short received for the purpose of which these were imported?

2. Briefly stated the facts of the case are that the assessee is engaged in the manufacture of Vanaspati and for this purpose had imported Crude Palm Oil. Under Notification No. 16 of 2000, concessional rate of duty is provided for crude palm oil imported for the purpose of manufacture of Vanaspati. The petitioner imported 7371.743 metric tones (MT) of crude palm oil. However, it actually received 7318.446 MT of crude palm oil at the port. Thus 53.297 MT of crude palm oil was short delivered to the appellant at the port at Bombay. The record of the Company shows that in fact even out of 7318.446 MT of crude palm oil only 7266.030 MT was used in the manufacture of Vanaspati. 52.461 MT amount of oil was lost after the import and during the process of manufacture. According to the assessee, out of this 52.461 MT of oil, 27.621 MT was lost due to evaporation, spillage, etc. and 24.795 MT oil was lost when an accident of two tankers took place while the oil was being transported to the factory. Thus the total of shortage in the amount of oil was 105.713 MT. This shortage works out to 1.445% when compared with the total import of 7318.446 MT. The Assessing

Officer held that the assessee could not avail of the concessional rate of duty in respect 105.713 MT oil which was short of the total oil imported. The assessee filed an appeal and the Commissioner of Appeals held as follows:

There is no doubt that the goods have been irretrievable lost/destroyed due to accident of tankers, evaporation and spillage, etc. The goods were, thus, not available for the purpose for which they were imported due to reasons beyond the control of the Appellants. Therefore, differential Customs duty is not recoverable on the said goods as the respondents have not produced any evidence to show that the short received imported goods have been used for any other purpose for which these goods were imported.

3. This is a pure finding of fact and no question of law arises out of this. The finding of fact in respect of 52.416 MT is that this was lost due to the evaporation and spillage and on account of accident of two tankers. With respect to the 53.927 MT oil, admittedly, even the case of the revenue was that this was a case of short landing and in fact the assessee had never received this amount of oil though it had paid price for the entire amount imported. The total difference as pointed above is only 1.445%. This is a very negligible percentage of loss when compared to the total import. Out of this approximately half the loss is due to the short delivery at the port; 25% of the loss is due to evaporation and spillage and 25% of the loss is due to accident of two tankers. This oil was never available to the petitioner for manufacture of Vanaspati though it had paid the price for the same.

4. Therefore, in our considered view the assessee cannot be denied the benefit of concessional rate of duty on this amount of oil. It is not the case of the Revenue that this oil has been used for some other purpose. This was oil which never reached the assessee. The case of the assessee is squarely covered by the judgment of the Apex Court in BPL Display Devices Ltd. v. Commissioner of Central Excise, Ghaziabad 2004 (174) E.L.T. 5 (S.C.).

5. In view of the above discussion, we find no merit in the appeal which is accordingly dismissed.

