(2015) 07 AHC CK 0194

In the Allahabad High Court

Case No : Central Excise Appeal No. 139 of 2004

Jhunjhunwala Vanaspati Ltd. APPELLANT

Vs

Commissioner of Central Excise, Allahabad RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Citation : (2015) 323 ELT 681

Hon'ble Judges : Tarun Agarwala, J;Surya Prakash Kesarwani, J

Bench : Division Bench

Advocate : A.P. Mathur, for the Appellant; A.K. Rai, CSC and B.K.S. Raghuvanshi, Advocates for the Respondent

Judgement

1. Having heard Sri. A.P. Mathur, learned counsel for the appellant and Sri. B.K.S. Raghuvanshi, learned counsel for the department, we find two striking factors namely that the Palmolive oil has been imported which was transported from the Calcutta Port to the petitioner''s factory at Jaunpur which is at a distance of more than 1200 kms. and the stand of the appellant is that the loss of .07% was on account of the fact that some of the oil remained stuck on the side of the container which was transporting the oil and consequently they were entitled for exemption under Rule 8 of the Customs (Import of Goods to Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. The said Rule comes into operation only when the goods are intended for use by the manufacturer for the specific purpose. The word ''intended for use'' or the word ''for use'' has been explained by the Hon''ble Supreme Court in BPL Display Devices Ltd. - 2004 (174) E.L.T. 5 (S.C.) wherein the Hon''ble Court held as under:

"We are of the view that no material distinction can be drawn between the loss on account of leakage and loss on account of damage. The word ''for use'' used in similar exemption Notifications have also been construed by this Court earlier in the State of Haryana v. Daltnia Dadri Cement Ltd., 1987 (Suppl) SCC 679 to mean ''intended for use''. According to this decision the object of grant of exemption was only to debar those importer/manufacturers from the benefit of the Notifications who had diverted the products imported for other purposes and had no intention to use the same for manufacture of the specified items at any stage."

We are of the opinion that the said decision is squarely applicable in the instant case. Consequently the question of law framed which is as under:

"Whether the Hon''ble Tribunal was justified in denying the benefit of concessional rate of duty under Notification No. 16/2000-Cus., dated 1-3-2000 on the quantity of imported palmolive oil which was lost in transit on account of its having viscous material which sticks to the surface of the containers in which it is kept and it is not possible to take out the entire quantity of palmolive oil from the containers?"

is answered in favour of the appellant and against the department. The impugned orders are quashed.

2. The appeal is allowed.

