

Benefit of no duty import allowed when goods jointly imported by financing company and EOU

The CESTAT, Chennai in the case of *M/s. Same Deutz – Fahr India (P) Ltd. v. Commissioner of GST & Central Excise (Customs Appeal No.42175 of 2014, dated May 26, 2023)* allowed the Export Oriented Unit (“EOU”) and financing company jointly to enjoy the benefit of no duty imports when imported goods used by EOU.

Facts:

M/s. Same Deutz-Fahr India (P) Ltd. (“**the Appellant**”) is an EOU and is engaged in manufacturing of tractors and its accessories. The Appellant’s job worker M/s. Amul Industries Pvt. Ltd. (“**M/s. AMUL**”) imported 3 machineries cumulatively valued at INR 4,95,05,655/- on behalf of the Appellant. However, the Bill of entry was filed by the Appellant.

The machines were cleared by the Appellant by availing the benefit of Notification No. 52/2003-Cus. dated March 31, 2003 (“**the EOU Notification**”) i.e. without payment of custom duty when goods will be put to use by EOU for manufacturing goods for export.

The proper officer issued the notice levying demand of INR 1,41,78,027/- on the Appellant on three grounds firstly, the import documents were not filed by the Appellant and M/s. AMUL, secondly, the bond for fulfilment of conditions of the EOU Notification was not filed by the Appellant and the M/s. AMUL jointly and lastly that, the agreement between the Appellant and M/s. AMUL was of Principal and job worker and not of lessor and lessee. The demand was confirmed by the Commissioner vide Order-in-Original No. 1/2014 (Cus.) dated June 30, 2014 (“**the Impugned Order**”).

Aggrieved by the Impugned Order the Appellant filed an appeal before the CESTAT, Chennai.

Issue:

Whether the machineries imported are eligible for the benefit of the EOU Notification?

Held:

The CESTAT, Chennai in [***Customs Appeal No.42175 of 2014***] held as under:

- Observed the legal provisions and CBEC's Circular No. 88/95-Cus dated August 01, 1995, and stated that the circular (ibid) makes it clear that leasing company do not qualify for the EOU exemption therefore, a facility has been provided by the Exim policy for the domestic leasing company to jointly file the import documents along with the EOU to enable the import of the capital goods free of duty.
- Noted that, EDI system does not permit joint filing of the import documents and the agreement for the machining work between the lessor and lessee will not be affected by the fact that they had a principal and job worker manufacturer relationship.
- Held that, the Commissioner in the Impugned Order noted that the machines were put to use by the Appellant for manufacturing goods as per the EOU Notification thus, the benefit of the EOU Notification cannot be totally denied to the Appellant.
- Further, rejected the contention of the Revenue of invocation of extended period of time by stating that Revenue department did not find any additional/hidden documents during their investigation which were used by the Revenue Department to challenge the exemption availed by the Appellant.
- The CESTAT allowed the appeal and gave time to the Appellant and M/s. AMUL to comply with bond condition.

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