

Customs, Excise and Gold Tribunal - Delhi

Nath Bros. Exim International ... vs Commissioner Of C. Ex. on 14 June, 2005

Equivalent citations: 2005 (190) ELT 415 Tri Del

Bench: P Bajaj

ORDER P.S. Bajaj, Member (J)

1. In this appeal which has been preferred against the order-in-appeal, the appellants have contested the correctness of the impugned order directing them to pay charges on cost recovery basis and not on MOT basis.

2. I have heard both sides and gone through the record. From the record, it is evident that the appellants are 100% EOU. As per the terms of the bond executed by them, they were liable to pay charges on cost recovery basis, if any Customs Officer was posted in their unit for supervision. But there is nothing on the record to suggest if any such posting was made. Rather, it has not been disputed by the authorities below in their respective orders that no Customs Officer was appointed in their factory. That being so, charges on cost recovery basis, cannot be claimed by the Revenue. The Revenue can only claim charges on MOT basis which the appellants had already paid for the disputed period from 1-1-2002 to 30-6-2003. It may also be added that for the subsequent period, charges on MOT basis have been claimed from the appellants and not on cost recovery basis. The law laid down in the case of Kapoor International v. CCE, Faridabad -, referred to by the learned JDR, is not attracted to the present case. That was a case where supervision charges were found to be payable on actual basis by the assessee as facility was provided to him in terms of the bond. But such is not the situation in the case in hand. Rather the case of the appellants stands covered by the ratio of the law laid down in the case of G.T. Cargo Fittings India (P) Ltd. v. CC, New Delhi, 2004 (174) E.L.T. 319, wherein demand for payment of charges on cost recovery basis from 100% EOU was set aside.

3. Consequently, the impugned order is set aside and the appeal of the appellants is allowed with consequential relief, as per law.

(Dictated and pronounced in the open Court)