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C.A.No. 5179 OF 2001
ITEM No.102

Court No. 9

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.5179/2001

M/S. OMKAR OVERSEAS LTD. & ANR.

Appellant (s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

(With office report)

Date : 05/08/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s)Ms. Meenakshi Arora, Adv.

For Respondent (s)Mr. N.K. Bajpai, Adv.
Ms. Rekha Pandey, Adv.
Mr. B. Krishna Prasad, Adv.

UPON hearing counsel the Court made the following
O R D E R

Ms. Meenakshi Arora, learned counsel commenced her arguments at 11.35 A.M. and concluded at 11.50 A.M. Thereafter, Mr. N.K. Bajpai commenced his arguments and concluded at 12.10 P.M.

The appeal is allowed in terms of the signed order. There will be no order as to costs.

(K.K. Chawla)
Court Master

(Jasbir Singh)
Court Master

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5179 OF 2001

M/S. OMKAR OVERSEAS LTD. & ANR.

Appellant (s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

O R D E R

This appeal by the assessee is against an order of the High Court dated 17th July, 2000.

Briefly stated the facts are as follows:-

The appellants bought 100% cotton fabrics from one M/s Gopi Synthetics and then exported the said fabrics. The appellants claimed rebate under Notification No. 29/96 -CE (NT) dated 3rd September, 1996 on the footing that duty had been paid by the manufacturer i.e. M/s. Gopi Synthetics. This rebate was denied on the ground that duty had been short paid by M/s. Gopi Synthetics inasmuch as they had availed of 60% deemed Modvat credit whereas they were only entitled to avail credit @ 50%. For this short payment of duty, a show cause notice was issued to M/s. Gopi Synthetics. After receipt of the show cause notice M/s Gopi Synthetics paid up the 10% duty which had been short paid. They then appealed against penalty which had been levied on them. The Commissioner (Appeals) waived penalty on the ground that short payment was not by reason of any fraud, collusion or any wilful mis-statement or suppression of facts. The appeal filed by the Department against that order was dismissed on the ground of non-compliance with statutory provisions. Thus, the order of Commissioner (Appeals) in the case of M/s Gopi Synthetics has attained finality. In their case it has been held that short payment was not due to any fraud, collusion or any wilful mis-statement or suppression of facts.

The only ground on which the appellants have been denied rebate is that M/s Gopi Synthetics (the manufacturer) had short paid duty. Even though M/s Gopi Synthetics has since paid the duty and it has been finally held that there was no fraud, collusion or any wilful mis-statement or suppression of facts, rebate is being denied to the appellants. This is being done on the specious plea that it was the duty of the appellants, before he exported the goods, to see that the correct amount of duty had been paid. We are unable to accept this submission. Benefit of rebate is not to be denied because there is short payment. Benefit can be denied only if there is short payment by reason of fraud, collusion or any wilful mis-statement or suppression of facts. Once it has been held that there was no fraud, collusion or any wilful mis-statement or suppression of facts on the part of the party who was to pay the duty then the exporter cannot be denied rebate.

In this view of the matter, we are unable to sustain the impugned judgment of the High Court or of the order passed by Joint Secretary to the Government of India in the revision application. The appeal is accordingly allowed. It is held that the appellants will be entitled to rebate under the Notification. There will be no order as to costs.

.....J.
(S.N. Variava)

.....J.
(H.K. Sema)
New Delhi,
August 05, 2003.