

**SUPREME COURT OF INDIA**

BFL Display Devices Limited

Vs.

Commissioner of Central Excise, Ghaziabad

C.A.No.602 of 2004

(Mrs.Ruma Pal and Arun Kumar JJ.)

08.10.2004

**JUDGMENT**

**Ruma Pal, J.**

1. The question in this appeal is whether the appellant is entitled to the benefit of Notification No. 13/97-Cus. as amended by Notification No. 25/99-Cus. These two Notifications provide for certain benefits to specified items if they are imported into India 'for use' in the manufacture of other items specified in the notifications.

2. It is not in dispute that the appellant had imported parts of picture tubes for manufacture of colour picture tubes. Both the input and the manufactured items are covered by the Notifications. It is also not in dispute that a small percentage of the imported parts were damaged in Transit and could not be used to manufacture picture tubes during the year 2000-2001. The appellant claimed the benefit of the aforesaid Notifications in respect of the entire lot of the parts imported relying, inter alia, upon the earlier decision of the Tribunal in *National Organic Chemical Indus. Ltd. v. Collector of Customs (Import), Mumbai*<sup>1</sup>, which had held that the benefit of the Notifications could not be denied in respect of goods which were intended for use for manufacture of the final product but could not be so used due shortage or leakage. The Notifications relied upon in the decision in *National Organic Chemical Indus. Ltd. (supra)* are substantially similar to the present Notification. The appeal preferred by the Department from the decision of the Tribunal was dismissed by this Court on 20th, February, 2002 - *Commissioner of Customs v. M/s. National Organic Chemical Indus. Ltd.* [C.A. No. 6764/99]. The Tribunal, however, relied upon its earlier decision in the case of *Commissioner of Central Excise, Meerut v. M/s. BPL Display Devices Ltd.* reported *in*<sup>2</sup> to hold against the appellant. This Court following the affirmation of the Tribunal's reasoning in *National Organic Chemicals Indus. Ltd. (supra)* on 20-2-2002, allowed the appellant's appeal. This appeal must therefore be necessarily allowed. 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 words 'for use' used in similar exemption Notifications have also been construed by this Court earlier in the *State of Haryana v. Dalmia Dadri Cement Ltd.*<sup>3</sup>, 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.

3. In the circumstances, the appeal is allowed but without any order as to costs.

<sup>1</sup>1999 Indlaw CEGAT 4285

<sup>2</sup>2002 Indlaw CEGAT 1534

<sup>3</sup>1987 (Supp.1) SCC 679