Collector of Central Excise Vs. Kumar Textiles

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-11-1996

Reported in : (1997)(93)ELT414TriDel

Appellant : Collector of Central Excise

Respondent : Kumar Textiles

Judgement :

1. The short point for determination in the present appeal is whether handloom cess shall be leviable on processed fabrics when cess has already been paid on grey fabrics.

2. The facts of the case in brief are that the respondents herein are engaged in processing of grey fabrics. Grey fabrics are received by the respondents and after dyeing they are sent back to the persons who sent the grey fabrics to them. The Assistant Collector alleged that since the respondents herein are manufacturing processed fabrics and, therefore, cess should be levied and collected on processed fabrics irrespective of whether cess has already been paid on grey fabrics. In appeal, the learned Collector (Appeals) went a stage further, holding that cess of differential amount equal to that payable on processed fabrics minus the amount already paid on grey fabrics should be collected and remanded the case to the Assistant Collector for readjudication. Against this order, the Department has filed the present appeal on the ground that since both the grey fabrics and processed fabrics falling under sub-heading 52.05 and 52.06 are shown in the Schedule and since grey fabrics are classifiable under sub-heading

52.05 and processed fabrics are classifiable under 52.06, therefore, cess shall be payable on both types of fabrics.

3. Shri A.K. Agarwal, learned SDR submitted that the respondents herein in any case manufacture cloth and since under Section 3 of the Khadi and other Handloom Industries Development (Additional Excise Duties on Cloth) Act, 1953, cess is leviable on cloth. Therefore, irrespective of whether duty was paid on cloth earlier should be paid by the respondents herein as they are the manufacturers of dyed (processed) cloth. When learned SDR was pointedly asked to show us the Schedule, he could not produce or cite the particular Schedule on which the present appeal is based.

4. Mrs. Kumar, Proprietor, appearing for the respondents herein submits that they are getting cess paid cloth and were dyeing the same cloth.

Since duty of cess was leviable on cloth only and since they were not manufacturing any new product out of the cloth, therefore, cess duty cannot be demanded from them. She, therefore, prays that the appeal may be rejected.

5. Heard the submissions of both sides. We find that Section 3 of the Act ibid provides that there shall be levied and collected cess duty on cloth manufactured on or after the appointed day. The point for consideration, therefore, is whether in terms of Khadi and other Handloom Industries Development (Additional Excise Duties on Cloth) Act, the dyer of the fabrics is a manufacturer or not. This point becomes important in view of the fact that the term used for levy and collection of cess duty is on cloth and not on fabrics as used by the Central Excise Act. In the absence of any provision that dyeing of cloth shall be termed as manufacture for the purpose of levy of cess, we hold that duty on cloth (grey fabrics) has already been paid and no new product was coming into existence after dyeing inasmuch as cloth remains the same whether it was grey or dyed, we hold that cess cannot be levied and collected on dyed cloth if it has already been paid once on cloth. We also find that the Department could not substantiate its contention in the grounds of appeal. In the circumstances we set aside the impugned order inasmuch as it requires payment of differential duty and reject the appeal also.