

**Collector of C. Ex. Vs. New Great Easter Spg. and Wvg.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-21-1997

**Reported in :** (1997)(95)ELT75TriDel

**Appellant :** Collector of C. Ex.

**Respondent :** New Great Easter Spg. and Wvg.

**Judgement :**

1. The short point to be considered in this appeal is whether chindies of cotton fabrics are exempt from handloom cess in terms of first proviso to Notification 115(E), dated 1-3-1975. The Assistant Collector held that handloom cess is payable on these items. On the other hand, the Collector (Appeals) observed that item, in question, is exempt in terms of aforesaid notification.

2. Shri L.P. Dhir, Id. Advocate appearing for the respondents, submitted that the very issue had come up for consideration before the Tribunal in the case of C.C.E. v. Lakshmi Mills Company Ltd. reported in 1989 (43) E.L.T. 487 wherein it was held that cotton chindies are not liable to handloom cess following the earlier decision of the Tribunal in the case of C.C.E., Madras v. Kothari (Madras) Ltd. as per Order No. 215/87-D, dated 4-3-1987.

3. He also submitted that it is clear from the notification that all varieties of cloth are exempt except the items falling under Medium-A, if unprocessed and falling under Medium-B and Course, if unprocessed.

It was submitted by him that it is not in dispute that these two items do not fall under Medium-A or Medium-B as per notification.

4. On the other hand, Sh. Mohideen, Id. DR contended whether item, in question, falls under Medium-A or Medium-B was not an issue before the authorities below and there was no finding on this issue.

5. We have carefully considered the submissions. We find that the Tribunal, without noticing the earlier decisions referred to above, has come to the same conclusion that chindies of cotton fabrics are not liable to handloom cess since in view of wording of the notification that all varieties of cloth are exempt except the items falling under Medium-A or Medium-B. We also take note of the fact that the Board also has clarified the position on 12-7-1984 as per Tariff Advice No. 32/84 F.No. 51 /25/82-CX.2 wherein it was said that in terms of Ministry of Commerce and Industries Notification No. 115(E), dated 1-3-1975 issued under Khadi and Other Handloom Industries Development (Addl. Excise Duty on Cloth) Act, 1953, all varieties of cloth which are for the time being exempted from duty of Excise leviable thereon under the Central Excises and Salt Act, 1944 are exempt from the Handloom Cess. Further, in para 3 of the clarification it was clarified that matter which was further taken up with the Administrative Ministry. The office of the Development Commissioner, Deptt. of Textiles in the Ministry of Commerce, has clarified that the fabrics which are exempt from the levy of basic excise duty also attract exemption from the levy of handloom cess and, therefore, the handloom cess need not be collected in such cases. In the present case, no evidence has been placed on record by the department or any finding in his order that these items are falling under Medium-A or under Medium-B as per the wording of the aforesaid notification. In the facts and circumstances and in view of the wording of the notification, and taking note of the clarification issued by the Board dated 12-7-1984, we find that Collector (Appeals) was right in holding that these items are exempt in term of the aforesaid notification. We do not find any infirmity in the impugned order and in the result, appeal filed by the department is, hereby, dismissed. Cross Objection, filed by the respondents, is also disposed in the above terms.