

Commissioner of Central Excise Vs. Broach Textile Mills Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-30-1998

Reported in : (1998)(62)ECC355

Judge : K Venkataramani, Vice-, J S Murthy

Appellant : Commissioner of Central Excise

Respondent : Broach Textile Mills Ltd.

Advocate for Def. : Shri. V. Sridharan

Judgement :

1. This is an appeal filed by the Commissioner of Central Excise Vadodara, on a direction under Section 35-E (1) of the Central Excise Act 1944, from the Central Board of Excise & Customs, to apply to the Tribunal for testing the legality and propriety of the Order dt.

21.3.96 passed by the Commissioner of Central Excise & Customs Vadodara. The brief facts are that the Respondents are manufacturers of Cellulosic Spun Yarn falling under Chapter 55 of the Central Excise Tariff Act. 1985. They manufactured single spun yarn and cleared the same to independent buyers as well as to another unit of the respondents on payment of duty. It therefore appeared that the Respondents is having the facility for manufacture of doubled yarn falling under sub-heading 5506.21 and 5510.60 of the Central Excise Tariff Act. 1985. They were availing exemption under Notification No.35/95 for the manufacture of double

yarn in their factory after paying duty on single yarn used for the manufacture of double yarn. The Notification was amended by Notification 84/95-CE and a proviso was added to the effect that exemption contained in Serial No. 1 relating to double yarn shall not apply to the clearance of such yarn to the factory having facilities "including plant and equipment for producing single yarn". Show Cause Notice was issued on 4.10.95 to the respondents proposing recovery of duty on the clearance of double yarn for the period from 18.5.95 to 20.6.95, on the ground that the exemption was no more applicable to them on double yarn because their factory had the facility of producing single yarn as well as double yarn. The Commissioner of Central Excise Vadodara dropped the demand on the ground that the premises where the double yarn was manufactured are separate and had been separately issued with Central Excise registration certificates under Rule 174 of Central Excise Rules, 1944 for the two different and separate premises. The single yarn had been cleared on payment of duty to their other unit for manufacturing double yarn. The Commissioner also held that the Respondents cannot be said to have manufactured double yarn in an integrated factory, having facilities for manufacturing single yarn and double yarn. The propriety and legality of this order passed by the Commissioner is now to be determined.

2. Shri K.L. Ramteke the Ld. JDR pointed out that the Respondents are an integrated unit, having facilities for producing single yarn and that the single yarn, which is manufactured by one section of factory is cleared to the other section of the Respondents factory which was then used for manufacturing double yarn in the other section. Thus, the two unit are part of an integrated factory and the very purpose for the proviso which was added by the amending Notification No. 35/95, according to the Ld. JDR was to deny exemption to such an integrated unit.

3. Shri V. Sridharan the Ld. Counsel for the Respondents contended that the proviso to the Notification makes it clear that the exemption under Notification No. 35/95 would not apply to clearances of yarn from a factory having facilities, including plant and equipment for producing single yarn. The emphasis in the proviso is on a factory, and if the factory premises where the single yarn is manufactured is distinct from the factory premises where the double yarn is produced, the Ld. Counsel submitted then proviso in the Notification cannot be

applied. He relied upon the Tribunal decision in the case of Purolator India Limited v. Collector of Central Excise. , where the Tribunal held that when the exemption is with reference to a factory it is the place of manufacture that is the criterion for the exemption and not the person who manufactures the goods.

4. We have carefully considered the submissions. The issue is regarding the applicability of the proviso to Notification 35/95- which was brought into effect by Notification 84/95 and this proviso reads "provided that the exemption contained hereinabove relating to Sr. No.1 or 2 shall not apply to the clearances of yarn from a factory having facilities (including plant and equipment) for producing single yarn." Double yarn is covered by S. No. 1 of the Notification. The Department has urged that the assessee herein is an integrated unit having facilities including plant and equipment for producing single yarn, and according to the Department the effect of the amendment brought about by the proviso was to deny the exemption to yarn cleared from factories having such facilities for producing single yarn and the object of the amendment was to make it clear that the exemption was meant for yarn made in small units. However, apart from urging that the two units of the Respondents are in the nature of integrated factory Department has not produced material which would demolish the finding of the Commissioner in the impugned order. He has given a finding that according to Rule 174 relating to issue of registration certificate for manufacture of excisable goods, if there are more than one premises the manufacturer has to obtain separate registration. Accordingly the Respondents have obtained two registration certificates for separate premises and they had also cleared single yarn from one of the registered premises on payment of duty to the other for manufacturing double yarn. The Commissioner has further observed that the exemption under the Notification No. 35/95 is given to the product double yarn manufactured by a factory irrespective of the fact whether any there plant is possessed or not by the same manufacturer. The Commissioner has also found that he premises separately registered would also answer the definition of 'Factory' in Section 2(e) of the Central Excise Act.

Apart from this finding of the Commissioner that the two units are separate factories for the purposes of Central Excise Act, it was submitted before us that on the same issue there was another order of the Jurisdictional Assistant

Commissioner of Central Excise & Customs, Bharuch Division dt. 10.10.95, in which similar view was taken by the Assistant Commissioner in finalising the provisional assessment. In this order the Assistant Commissioner has given a finding that the premises where the single yarn is manufactured and the premises where doubled yarn is manufactured is quite distinct and separate, and he also noted that where single yarn is manufactured the premises did not have facility of doubling the single yarn, and also he found that the premises where the process of doubling is carried out there is no spinning facility. This order of the Assistant Commissioner has also not been challenged. The above findings of the Commissioner in the impugned order, and that of the Assistant Commissioner in the order finalising the provisional assessment, both have taken a consistent view based on relevant material that the two factories are separate. In this context the wording of the proviso has to be read which is with reference to a factory and not with reference to a manufacturer because, if the proviso was with reference to a manufacturer the present respondents will be hit by that proviso; but the proviso being with reference to a factory, having regard to the factual findings, of two authorities that the two units of the Respondents are two factories, the exemption cannot be denied to such separately registered premises which function as two different factories. In the context it is also relevant to note that the activities carried out in the two units are not so integrated that one cannot function without the other.

When manufacture of single yarn is completed, the single yarn itself is a finished excisable product, which is in fact cleared on payment of duty by one unit of the respondents to their other unit. In such a context, the case law cited by the Id. Counsel in the case of Purolator India Limited (supra) becomes relevant. The Tribunal observed therein that the Notification No. 46/81 considered in that decision is with reference to the place of manufacture and not with reference to the fact as to who is the manufacturer. Again in the Tribunal decision in the case of Diamond Cement v. Collector the clinker unit of the assessee was separated from grinding unit by some distance and separate Central Excise Licence was issued to them, and the Tribunal held that clinker unit used for production of cement, not being manufactured in the same factory it was held that assessee therein was not eligible for exemption under Notification 127/87.

Therefore for the reasons stated above and in the light of the case law referred to (supra), we hold that the impugned order of the Commissioner of Central Excise, Vadodara is legal and proper and there is no infirmity in that order to call for its review. The appeal is rejected.

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