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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-06-1998

Reported in : (1998)(60)ECC624

Appellant : Hi-tech Poly Pack

Respondent : Commissioner of Central Excise

Judgement :

1. In this case a demand of duty of Rs. 2,52,052.50 has been confirmed on the appellants for the reasons that they have been held not to be entitled to the benefit of Notification No. 65/87, dated 1-3-1987 on HDPE sacks manufactured by them out of fabrics received by them from outside. A penalty of Rs. 10,000/- has also been imposed for contravention of the central excise duty. The item manufactured by the appellants, namely, HDPE Woven Sacks undisputedly fall for classification under CET sub-heading 6301.00. They are made out of non-duty paid HDPE laminated fabrics produced on circular looms by the fabrics manufacturer. The appellants have availed of the benefit of Notification No. 175/86, dated 1-3-1986, as amended, up to the clearance value of Rs. 15 lakh and thereafter paid duty @ 5% adv. Vide letter dated 29-8-1987, they informed the jurisdictional Range Superintendent that they would be manufacturing HDPE Woven Sacks without the aid of power w.e.f. 1-9-1987 and stopped payment of central excise duty thereafter. A notice was issued to them on 20th August, 1989 proposing recovery of duty on HDPE sacks manufactured and cleared during the period from 1-9-1987 to 29-2-1988 and proposing imposition of penalty. The notice also alleged that the

appellants were liable to pay duty on the quantity of HDPE laminated fabrics received by them under Chapter X procedure without payment of duty in terms of Notification No. 65/87. The adjudicating authority denied the benefit of Notification No. 65/87 to the appellants; he, however, held that they were not liable to pay any further duty on fabrics since they had followed the procedure set out in Chapter X and had used the fabrics procured by them in the manufacture of plastic woven sacks, thereby fulfilling the conditions of Notification No. 65/87. He also imposed a penalty under Rule 173-Q. Hence this appeal.

2. We have heard Shri B.B. Gujral, Advocate, who argues both on merits and on time-bar. The points raised by him are mainly as under: 1. the adjudicating authority has accepted the contention of the appellants that in their factory there was no use of power in the manufacture of HDPE woven sacks; 2. the reason for denial of the benefit of complete exemption from duty under Notification No. 65/87, as seen from the finding in para 13 of the impugned order, is that the fabrics procured by the appellants herein were manufactured using power on circular looms.

The use of power by the fabric manufacturer in his factory cannot lead to the denial of the exemption under Notification No. 65/87 in the undisputed position of non use of power by the appellants who are claiming the benefit of the notification; and The appellants had informed the Department on 29-2-1987 that they would be starting the production of HDPE woven sacks from 29-8-1987 and that they would be starting production of HDPE Woven Sacks without the aid of power from 1-9-1987 and the goods so produced would be cleared at nil rate of duty under Notification No. 65/87. The learned Counsel submits that since the appellants disclosed this fact to the Department that they would be clearing the HDPE Woven Sacks manufactured by them without the aid of power at nil rate of duty under Notification No.65/87, it cannot be said that there has been any suppression on their part, so as to warrant the extended period of limitation being applied in the present case. He, therefore, prays that the demand may be set aside both on merits and on time-bar.

3. Opposing the prayer of the learned Counsel, Shri Satnam Singh, SDR, states that the benefit of Notification No. 65/87 is not available to the appellants, since the base material out of which the appellants manufacture HDPE Woven Sacks was undisputedly manufactured with the aid of power. He submits that this would be the correct reading of the Notification No. 65/87. Regarding time-bar aspect, his contention is that since the appellants did not file any classification list after they had crossed the ceiling limit and had not claimed the benefit of Notification No. 65/87 in any classification list during the relevant period, they have suppressed from the Department, vital information, and, therefore, the extended period of limitation has rightly been attracted in the present case.

4. We have considered the rival submissions. Notification No. 65/87 exempts the goods specified in Column No. 3 of the table annexed to the notification and falling under sub-headings specified in Column 2 of the table annexed thereto, from so much of the duty of excise leviable thereon which is specified in the Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in Column No. 4 of the table subject to the conditions, if any, laid down in the corresponding entry in Column No. 5 thereof. The appellants had claimed the benefit of Serial No. 4 of the table annexed to the notification. This entry describes the goods as "made up textile articles including blankets...falling under sub-heading 6301.00". The rate prescribed in Column No. 4 is nil and the condition described in Column No. 5 is "if made without the aid of power". The condition set out against Serial No. 4 has not been contravened by the appellants. In other words, there is no dispute that the appellants did not use power in their factory. There is no condition in the notification that the benefit will not be available if the starting material or the base material has been manufactured with the aid of power. In the absence of any such restriction and in the clear language of the notification, we find that the appellants are entitled to the benefit of nil rate of duty in terms of Notification No. 65/87.

5. On the aspect of limitation, we also agree with the learned Counsel that in the circumstances when the appellants had disclosed to the Department that they were intending to manufacture HDPE Woven Sacks without the aid of power and would be clearing the same at nil rate of duty under Notification No. 65/87, it

cannot be said that there has been any suppression on their part. The Tribunal has held in a series of decisions that in such a set of facts and circumstances, suppression charge cannot be sustained. Of course, the appellants have not followed the procedure of filing the classification list, but, that at worst can give rise to the imposition of penalty. We find that in this case there is a penalty imposed under Rule 173Q. While setting aside the duty demand, in view of our finding that the appellants are entitled to the benefit of Notification No. 65/87, we sustain the penalty imposed for contravention of the relevant Central Excise Rules, but reduce the penalty amount from Rs. 10,000/- to Rs. 5,000/-. The appeal is disposed of in the above terms.

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