

Simples Mills Co. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-13-1998

Reported in : (1998)(79)LC414Tri(Mum.)bai

Judge : A Unni, a T V.K.

Appellant : Simples Mills Co. Ltd.

Respondent : Cce

Judgement :

1. In these two Appeals-one filed by M/s. Simplex Mills Ltd. and the other one filed by CCE, Bombay-the issue involved is Same and therefore both appeals are disposed of by this order.
2. The issue involved in both these appeals is whether duty is chargeable on the un-sized yarn or sized yarn.
3. The Ld. Counsel for the Simplex Mills submitted that the issue has been decided by the Hon'ble Supreme Court in the case of J.K. Spinning and Weaving Mills Ltd. and Ors. v. Union of India . In their own case earlier the Bombay High Court in W.P. No. 789/82 decided on 20th June, 1980, decided the matter in their favour following the earlier decision in the case of Union of India v.Morarji Goculdas Spg. Wvg. Co. Ltd. . He further submitted that the impugned order was passed by the Commissioner (Appeals) in respect of Dawns Mills Co. also in addition to the appellants/assessee and Hind Textile Mills; that the Appellate

Tribunal vide order No. 20/98-D in Appeal No. E/1064/90-D has already allowed the appeal filed by M/s. Dawn Mills Co. and the Appellate Tribunal following the decision in the case of Sivan Mills reported in 1991 (56) ELT 44 (Bom) : 1991 (37) ECR 383 (Bom) did not agree with the view taken by the Commissioner (Appeals). Ld. Counsel has also relied upon the other decision of the High Court as well as including the decision of CCE v. Dawn Mills Co. 1998 (24) RLT 749 and the Supreme Court decision in the case of Ahmedabad Manufacturing & Calico Printing Co. Ltd. v. UOI in which it was held that the decision in the case of J.K. Cotton Spinning & Weaving Mills will be applicable to all types of yarn under items 18-I, 18-III and 18-E of erstwhile Central Excise Tariff. He finally submitted that though as per chapter note 52 of the Central Excise Tariff sizing shall amount to manufacture, the note itself provided that the duty on sized yarn shall be charged on the basis of its weight before sizing; that such deemed provisions were not there in respect of Chapter 55 of the Tariff Act.

4. Ld. D.R. submits that the decision of the Supreme Court in the J.K. Cotton Spinning and Weaving Mills (supra) was in respect of the sized yarn which was captively consumed. The ratio of the decision is applicable only to composite mills and not to yarn sold to the customers. He contended that the duty under Rule 49 of the Central Excise Rules has to be levied and collected with regard to the form in which they were cleared from the factory.

5. We have considered the submissions made by both sides. We find that the impugned order in Appeal No. E/4413/90-D has already been set aside by this Tribunal in the case of Dawn Mills final order No. A 120/98-D. The Tribunal in that case observed as under: 4. We have carefully considered the matter. We find that the matter is already covered by a number of decisions of the Hon'ble Supreme Court and various High Courts. In the case of UOI v. Swan Mills Ltd. 1991 (56) 46 (Bom.) : 1991 (37) ECR 383 (Bom) the Hon'ble Bombay High Court had observed that the manufacture of yarn was complete at the spindle stage and that the process of sizing did not constitute a process which rendered the sized yarn liable to excise. In the case of Ahmedabad Mfg. & Calico Printing Co. Ltd. v. UOI relying upon their earlier decision in the case of J.K. Cotton Spinning and Weaving Mills Ltd. v. UOI the Hon'ble Supreme Court had held that the assessment of the yarn

used captively for weaving of fabrics had to be on the basis of unsized weight of yarn.

5. Following the above decisions and in view of the settled position in law, we do not agree with the view taken by the Ld. Collector, Central Excise (Appeals). As a result, the Appeal is allowed.

6. Following the ratio of the decisions referred by the Ld. Counsel of the Assessee and the ratio of the decision in the case of Dawn Mills (supra) we allow (sic) appeal filed by the M/s. Simplex Mills Ltd. and accordingly we reject the (sic) filed by the Revenue in Appeal No.E/560/93-D.

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