

Arvind Mills Ltd. (Ankur Vs. C.C.E. and C.

Arvind Mills Ltd. (Ankur Vs. C.C.E. and C.

SooperKanoon Citation : sooperkanoon.com/14859

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-1998

Reported in : (1999)(65)ECC399

Appellant : Arvind Mills Ltd. (Ankur

Respondent : C.C.E. and C.

Judgement :

1. The appellant herein which is a division of Arvind Mills Ltd., had cleared fents and rags covered by-Chapters 54 and 55 of the Schedule to the CETA 1985 during the year 1988, paying duty at the rate of 5% ad valorem in terms of Notification No 6/88-C.E., dated 19-1-1988 on the understanding that the quantity of fents and rags had to be calculated on the basis of the total clearances of man-made fabrics from the appellant's factory as well as another factory of Arvind Mills Ltd. situated at Naroda Road, Ahmedabad.

2. A show cause notice dated 24-5-1989 was issued to the appellants proposing reovery of differential duty of Rs. 59,844.60 P. as the department was of the view that the exemption was available only factory-wise and therefore, what was relevant was the quantity of fents and rags based on the clearance of fabrics from the appellant's factory alone.

3. The Assistant Collector confirmed the demand, holding that the appellants were not entitled to the benefit of exemption under the above mentioned Notification for the reason that the aggregate quantity of clearances of fents and rags exceeded

5% of the quantity of total clearances of man-made fabrics by the appellant's factory. The lower Appellate authority upheld the Assistant Collector's order; hence this appeal.

4. The appellants have asked for a decision on merits; therefore, we have heard Sh. Satnam Singh, learned DR and perused the records.

5. For a proper appreciation of the dispute in this appeal, it is necessary to reproduce Notification 6/88-C.E., dated 19-1-1988 : "Exemption from additional duty to fents and rags of man-made fabrics falling under headings 54.09, 54.12, 55.08, 55.11 and 55.12 :- In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, read with Sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government hereby exempts fents and rags of man-made fabrics falling under heading Nos. 54.09, 54.12, 55.08, 55.11 and 55.12 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from so much of the duty of excise leviable thereon under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), as is in excess of the amount calculated at the rate of five per cent ad valorem: Provided that the aggregate quantity of clearance of such fents and rags from any factory for home consumption by or on behalf of one or more manufacturers at the rate specified in this notification shall not exceed five per cent of the total quantity of clearances of man-made fabrics falling under heading Nos. 54.09, 54.12, 55.08, 55.11 and 55.12 of the said Schedule during a year." 6. The emphasis in the notification is on factory-wise clearances. The Notification also emphasises that even if there is more than one manufacturer, all the clearances from a factory are to be taken into account for the purpose of computation. In Notification where emphasis is manufacturer-wise, as for example in Notification No. 71/78, the Notification uses the words 'by or on behalf of a manufacturer from one or more factories'. As the clearances are to be determined factory-wise for the purpose of determining the eligibility to the benefit of Notification 6/88, duty has been rightly demanded as the aggregate quantity of clearances of fents and rags from the appellant's unit exceeded 5% of the total quantity of clearances of man-made fabrics. We therefore, see no reason to interfere with the impugned order and accordingly

uphold the same and reject the appeal.

7.0 I observe that in the appeal memorandum it is mentioned, inter alia, that 7.1 The appellant is a composite mill, namely, the Arvind Mills Ltd., Ahmd. One factory of the appellant is situated outside Raipur Gate, Ahmedabad, viz. Ankur Textiles whereas its another factory is situated at Naroda Road, Ahmedabad.

7.2 That the Ankur Textiles which is a division of the Arvind Mills Ltd. had cleared fents and rags covered by Chapters 54 & 55 during the year 1988.

7.3 That the order of the Id. Collector (Appeals) is not a speaking order. Words "from any factory" appearing in proviso to Notification No. 6/88, which would mean "from any one or more factories" have been misinterpreted by the Id. Collector.

7.4 That the Id. Collector appears to have construed above words to mean "from any single factory". This is against the clear intention of the Central Government to limit concessional rate of 5% only to 5% of the total quantity of clearances of man-made fabrics from the manufacturer's place of production.

7.5 That the main issue in appeal before the Id. Appellate Collector was not relating to clubbing or not clubbing of clearance from two factories of the appellant company.

7.6 The main issue is that whether Arvind Mills and Ankur Textiles are different manufacturers and, therefore, whether clearances of both the factories would or would not influence the aggregate quantity of clearance of fents and rags.

7.7 Hence, the Appellate Collector has erred in going beyond the challenge which was made by the appellant before him.

7.8 That as per 1984 (16) E.L.T. 228, the appellate authority is require confined to confine itself to the subject matter of the appeal.

7.9 Therefore, it may be struck down with consequential relief to the appellant.

8. Ld. DR has drawn attention towards the impugned order and emphasised that it is a settled issue that the question reading intention of legislature does not arise in

the face of express wording as held by the Tribunal in the case of *Videsh Sanchar Nigam Ltd. v. Collector of Customs, New Delhi* [1997 (94) E.L.T. 658 (Trib.)]. In the present case exemption has been granted to quantity of fents and rags cleared from "any factory" by or on behalf of one or more manufacturers and, therefore, the emphasis was required to be placed evidently on the word "any factory" i.e. any one factory by one or more manufacturers and the notification was required to be construed strictly as held in the case of *Rajasthan Spg. and Wvg. Mills Ltd. v. Collector of Central Excise, Jaipur* 8.2 He also stated that wherever the legislature or the Govt. intended to extend the benefit to one or more factories of a manufacturer, it has clearly been so stated as noted in (i) 1987 (31) E.L.T. 182 (Trib.) in the case of *Western Bengal Coalfields Ltd. v. Collector of Central Excise, Bombay*, (ii) 1987 (29) E.L.T. 254 (Tribunal) in the case of *Perfect Cartons, Cochin v. Collector of Central Excise, Cochin* & (iii) 1987 (27) E.L.T. 460 (Tribunal) in the case of *Techma Engineering Enterprise, Calcutta v. Collector of Central Excise, Calcutta*.

9. I have considered the above submissions. I observe that the Id. DR's contentions have a lot of force. It is well settled that a notification is required to be construed strictly and no word which is not there cannot be presumed to be there and it is the language of the notification which is required to be construed as it is. The words used in the Notification are "from any factory". Therefore, we cannot read them to mean "any one or more factories" in the absence of such words and the word aggregate quantity can only be taken to mean total quantity cleared during the year. Id. DR is also right in drawing our attention to the case law cited by him to show that wherever it was intended to cover one or more factories of a manufacturer, it was explicitly so mentioned in the notification. In the present case, in the absence of such a provision, any factory could only be taken to mean or refer to the factory of the appellant from which the goods in question have been cleared during the year. The other points mentioned by the appellants are hyper-technical and are of no consequence in view of the above position regarding the basic issue. I, therefore, agree that there was no cause to interfere with the impugned order. The appeal is, therefore rejected.