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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-22-1999

Reported in : (1999)LC345Tri(Delhi)

Appellant : Simplex Mills Co. Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The appellants received Polyester Staple Fibre (duty free) for export production of cotton Polyester blended fabrics. The demand of duty over Rs. 3 lakhs has been made on the ground that the waste arising in the production of fabric has not been accounted for.

2. Arguing the appeal, learned Counsel, Shri M.H. Patel submits that it is an undisputed fact that in the manufacture of yarn and fabric from staple fibre a certain quantity of waste arises. The appellants' records also show clearance of such waste under GP1's. He explains that according to the norm .1.211 kgs. of Polyester Staple Fabric is allowed to be received duty free for manufacture of fabrics containing 1 kg. of Polyester Staple Fibre under Rule 191BB. He submits that it is clear from this norm that wastage of about 20% arises in the manufacture. He also explains that the waste emerging is exempt from duty under Tariff Item 5503.39. He submits that the correlation of the input to export product as well as waste which was eligible for duty free clearance remains established from these facts and the demand of duty is totally unjustified.

3. Learned DR submits that while the appellants may have a case, it remains that they have not correlated the waste emerging in the use of staple fabric in question with the waste actually cleared. He, therefore, suggests that the case be remanded for a fresh decision.

4. We have perused the records of the case and have considered the rival submissions. We observe that production for export as well as production for domestic consumption take place simultaneously in the appellants' factory. Therefore, one to one correlation between the raw material received for export production and the waste emerging from the manufacture is not possible. Insistance on such a correlation also is not practicable as appellants are not able to segregate export production and production for domestic consumption in their factory. We note that the appellants have established that they have fulfilled their export obligation. The quantity exported also is above the norm for export. There is also evidence from the GP1's that the appellants had been clearing waste from their factory which establishes that during the course of manufacture waste had been emerging. In the circumstances, we hold that the demand of duty has been done on a purely technical ground that the waste emerging in the appellants' factory is not strictly and directly correlated to the waste emerging in the production of the duty free inputs received. As already mentioned, such correlation is not practicable.

Moreover, the waste was also exempt from duty. In the circumstances, we accept the appellants' contention that they have accounted for the entire raw material received by them without payment of duty as utilised in export production as well as in the waste which arises incidental to manufacture. The appeal is accordingly allowed with consequential relief to the appellants and the impugned order is set aside.

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