

Vardhman Spinning and General Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-10-1999

Reported in : (1999)(113)ELT168TriDel

Appellant : Vardhman Spinning and General

Respondent : C.C.E.

Judgement :

1. This appeal of M/s. Vardhman Spinning and General Mills Ltd. is directed against Order-in-Original No. 24/ADC/CE/90, dated 19-6-1990 of the Additional Collector of Central Excise, Chandigarh. The impugned order has demanded duty of Rs. 1,89,344.60 on 4351 kgs. of special yarn of trade name "Garden", "Day and Night" and "Sunshine" and 5859 kgs. of chenile yarn 100% acrylic. The order also demands duty of Rs. 46,490.76 which was short paid on 8350 kgs. of chenile yarn 100% cotton. Further, the order has imposed redemption fine of Rs. 10,000.00 with regard to 409 kgs. of yarn which was found unaccounted and imposed penalty of Rs. 10,000.00 on the appellants.

2. The proceedings in the instant case are the result of stock taking in the appellants' factory on 13-9-1988 and subsequent investigations.

The stock taking revealed that there was excess stock in five varieties of special yarn weighing 1586 kgs. which were not entered in the RG 1 register maintained by the appellants. Scrutiny of the private records during stock taking revealed that the appellants had not entered the full quantity of production of certain varieties of

special yarn in their RG 1 register. The shortages and excesses were also admitted by the appellants' officers in their statements.

3. The appellants have conceded the duty demand in respect of chenile yarn in the adjudication proceedings as well as in the present appeal.

With regard to "day and night" and "Sunshine" yarn alleged to be clandestinely removed, the appellants have submitted that this was normal fancy yarn classifiable under Chapters 50 to 55 of the Tariff and not under sub-heading 5606.00.

4. The appellants have submitted that these yarns have been merely categorised as special yarns without any indication/evidence. It has also been submitted that there was no justification to confiscate the excess stock found as they were still within the factory premises and that there was no justification to demand duty on stocks which are available in the factory as goods are liable to payment of duty only at the point of removal from the factory.

5. Countering the aforesaid submissions of the appellants, the Revenue has submitted that the offences in the instant case have been fully established by evidence. The excess stock found on stock taking has been admitted by the appellants also. They have admitted clearance of chenile yarn without payment of duty. The private records under seizure revealed the clandestine manufacture of the goods. It has also been submitted that the correct classification of the goods remained established by test reports. The revenue has, therefore, submitted that the impugned order is correct in law and is based on facts and merits confirmation.

6. We have perused the records and have considered the submissions made by both sides. We find that the excess unaccounted stock remains established by stock taking. The clandestine manufacture and clearance are also evidenced by the private production records which have been confirmed through statements of the appellants' officers. Test reports have also confirmed the duty demands. The appellants themselves have conceded the clandestine production and removal of one variety, namely, chenile yarn by them. In these facts and circumstances, we are unable to find any merit in the appeal. The appeal is accordingly rejected.

