Technological Inst. of Textiles Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-19-1999

Reported in : (2000)(116)ELT125TriDel

Appellant : Technological Inst. of Textiles

Respondent : C.C.E.

Judgement :

1. The appellants herein had filed a refund claim for approximately Rs. 13.20 lakhs in respect of handloom cess paid by them during the period 1-3-1986 to 18-3-1990 under protest on the ground that unprocessed cotton cloth received by them from traders for processing had already borne the burden of handloom cess. The claim was rejected by the Assistant Collector; an appeal to Commissioner (Appeals) was filed by the processors and the Commissioner (Appeals) remanded the case for de novo decision keeping in view the provisions of Khadi and Other Handloom Industries Development Act, 1953 and Exemption Notification if any covering handloom cess at the relevant time. The Assistant Collector again rejected the claim, this time on the ground of time bar. The appellants again moved the Commissioner (Appeals) who remanded the case to the Assistant Collector. The Assistant Collector again rejected the refund claim on the ground that the processors had not discharged the burden to prove that there was double payment of cess and the fact of double payment had not been proved since the appellants received the cloth from traders and not from a composite mill. The Commissioner (Appeals) upheld the order of the Assistant Collector holding as under : "I have

gone through the records of the case very carefully. I observe that unprocessed fabrics exempt from payment of Central Excise duties were also exempted from payment of cess during the period of refund claim in terms of the Khadi and Other Handloom Industries Development (Exemption from Payment of Excise Duty) Rules, 1975 issued vide Notification No. 115/E, dated 1-3-1975 and accordingly, the appellants claim that processed fabrics manufactured by them had already discharged the cess is not correct.

The appellants have contended that Notification No. 115/E was not applicable in their case as the same mentioned varieties of fabrics e.g. Medium A, Medium B, Dhoti, Saree, etc. and this terminology had been done away with in 1977 when specific rates of duties were replaced by ad valorem duties in the Central Excise Tariff. In this connection, I observe that description of fabrics as aforementioned in the Notification No. 115/E was under the Cotton Textile (Control) Order, 1948 and not under the Central Excise Tariff Act, and accordingly made use of terms as defined/understood under Cotton Textile (Control) Order, 1948. The appellants' claim that the unprocessed fabrics received by them correspond to the description of excluded variety in the ibid Notification is also not acceptable as the exclusion is only applicable to cotton fabrics manufactured in a composite mill and the appellants have not given any evidence that they had received any of the unprocessed fabrics from a composite mill. The case of C.C.E. v. Decent Dyeing Co., 1990 (45) E.L.T. 201 (S.C.) cited by them does not help their case as in this case the unprocessed fabrics received by them are clearly recognisable as non-duty paid. Accordingly, I hold that the Assistant Commissioner had correctly rejected the refund claim filed by the appellants as inadmissible. Accordingly, I uphold the order-in-original and dismiss the appeal." 2. We have heard Shri R.P. Singh, learned Counsel and Shri Mewa Singh, learned SDR.3. We find that even before us, the claim of the appellant is only that unprocessed cotton fabrics were liable to cess and, therefore, the cess liability must have been discharged by the grey cloth manufacturer.

This bald statement is not sufficient for the purpose of grant of refund when the onus lies upon the person claiming refund to establish that there has been a double payment of cess on the same quantity of materials for which the refund is being claimed. The appellants have not been able to substantiate their case for refund, and therefore, the lower appellate authority has rightly rejected the refund claim. We are in agreement with the finding of the Commissioner (Appeals) whose order we uphold. In the result the appeal is rejected.