Shriji Cording Centre Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-26-1999

Reported in : (2000)(92)LC166Tri(Mum.)bai

Judge : J Balasundaram, S T G.R.

Appellant : Shriji Cording Centre

Respondent : Cce

Judgement :

1. The Collector in the impugned order held that the activities of cutting, stitching and cording of cotton fabrics to give rise to bed-sheets and pillow covers amounts to manufacture as contemplated in the Central Excise Law. He, therefore confirmed the demand of Rs. 7,61,623.40 under Section 11A and also imposed a penalty of Rs. 40,000/- on the appellants.

2. The facts of the case are that the appellants are engaged in the manufacture of bed sheets and pillow covers. The appellants manufactured bed-sheets and pillow covers in the factory on job work for M/s. Mangalam, M/s. Loknath Tolaram and M/s. Mangal Kripa. Prior to 1.3.1986, bed-sheets manufactured out of running lengths of cotton fabrics were classifiable under T.I. 19 of the erstwhile tariff. The pillow covers were exempted. The department alleged that the bed-sheets manufactured by the appellants were dutiable and since the appellants had cleared the bed-sheets without payment of duty, therefore there was clandestine removal of bed-sheets. Accordingly, the Collector held as indicated above.

3. Shri R.M. Tiwari, ld. Advocate submits that the period covered in the instant case is from 1.4.1983 to 31.12.1986. He submits that therefore both old Central Excise Tariff and New Central Excise Tariff introduced from 1.3.1986 are relevant in the present case; that before 1.3.1986 bed-sheets were covered under T.I.19(I); that from 1.3.1986 bed-sheets were covered by new Central Excise Tariff under chapter sub-heading 6301.00; that the appellants were getting cut in size fabrics which the appellants hemmed and stitched; that bed-sheets were covered by the cotton fabrics; that the fabrics received by them were duty paid, there was no question of payment of duty again on cotton fabrics hemmed and stitched into bed-sheets; that after 1.3.1986, the position changed, the cotton fabrics were classifiable under different chapter sub-heading whereas the articles of cotton fabrics were classifiable under different chapter heading. Ld. Counsel submits that the period covered by the SCN in the instant case is from 1.4.1983 to 31.12.1986; that a SCN was issued earlier stating that the party had cleared bed-sheets and pillow covers valued at Rs. 14,47,380/- during the period 1.4.1986 to 12.12.1986; that the SCN was adjudged by the Asst. Collector holding that the removal had taken place during the year 1986-87 from 1.4.1986 to 13.12.1986 which were in excess of the exemption limit for that year and hence the assessee have to pay duty on the goods during the year 1986-87 and also on the goods under seizure as detailed in Annexure to the SCN. Ld. Counsel also submits that the period 1.4.1986 to 13.12.1986 is covered by two SCNs one adjudged by the Collector and other by the Asst. Collector. He submits that in view of the Asst. Collector's order for the period 1.4.1986 to 13.12.1986 the period available for confirmation of demand with the Collector was only from 1.3.1986 to 31.3.1986. He submits that the demand, if any, can therefore be confirmed only for the period 1.3.1986 to 31.3.1986. He submits that in view of the matter, the penalty is harsh and may be waived and prays that the appeal may by allowed.

4. Shri V.M. Oudhji, ld. JDR submits that cutting, hemming and stitching of fabrics amount to manufacture and, therefore bed-sheets manufactured were goods for the purpose of levy of duty. He submits that the authorities below have rightly held that bed-sheets are different from fabrics as they are distinct in name and use. He submits that therefore the duty has rightly been demanded on bed-sheets prior to 1.3.1986. He submits that from 1.3.1986 onwards bed-sheets were an altogether

different item for the purpose of classification and during that period the duty has correctly been demanded. He submits that the order of he Asst. Collector referred to by the appellants was not placed before the Collector to examine whether there was duplication of period or not. Reiterating the findings of the authorities below, ld.JDR submits that the appeal may be rejected.

5. Heard the rival submissions and perused the evidence on record as also the case law. We find that the entire case can be divided into 2 parts for the purpose of levy of duty. Central Excise Tariff was aligned and brought on pattern of HSN. We note that before 1.3.1986 classification of the product was admittedly under T.I. 19(1) of the erstwhile Central Excise Tariff. Tariff Item 19(1) reads "Cotton fabrics means all varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, saries, chadders, bed sheets, counter panes, bed spreads, table cloths, etc." A close look at this description of the goods shows that the bed-sheets are included in the cotton fabrics and since the bed-sheets are included in the cotton fabrics and if the cotton fabrics had paid duty, therefore, there was no question of bed-sheets paying duty. From the records placed before us, we note that there is no allegation that the cotton fabrics from which the bed-sheets were prepared were not duty paid. Since the duty was paid on cotton fabrics, therefore, we find that there was no provision for charging duty again on bed-sheets. Thus, we hold that the duty was not demandable on the bed-sheets cleared upto 28.2.1986.

6. However, the position changed from 1.3.1986 inasmuch as the cotton fabrics were classifiable under a different chapter heading and the bed-sheets were classifiable under different chapter sub-headings. We note that since the bed-sheets were chargeable to duty under a different heading 6301.00, therefore, they were liable to duty as separate item. However, in the instant case, we find that the Asst.

Collector had already ordered confirmation of duty from 1.4.1986 to 13.12.1986. We find that there is duplication of time. The only time, therefore that remains is the period from 1.3.1986 to 31.3.1986. Thus, we hold that the duty, if any, shall be chargeable under the present order for the period 1.3.1986 to 31.3.1986. In this view of the matter, we remand the case to the Commissioner for quantification of duty for the period 1.3.1986 to 31.3.1986. Having regard to the above findings and the facts and circumstances of the case, the penalty is reduced to Rs. 5,000/-. Appeal is disposed of in the above terms.