

Commissioner of Central Excise Vs. Mohan Spg. Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-15-2000

Reported in : (2001)(130)ELT934TriDel

Appellant : Commissioner of Central Excise

Respondent : Mohan Spg. Mills

Judgement :

1. This appeal has been filed by the Revenue against the order dated 30-1-1995 passed by the Collector dropping the proceedings and discharging the show cause notice dated 12-8-1991, against the respondents.

3. The respondents are engaged in the manufacture of yarn falling under Chapters 52 and 55 of the CETA. They cleared 189054 kgs. of acrylic yarn falling under sub-heading 5504.32 of the CETA, made out of 100% fabrics [acrylic fibres] during the period 1-2-1991 to 24-7-1991 at a nil rate of duty. They were served with a show cause notice dated 12-8-1991 for paying the short duty of Rs. 45,37,296/- under Section 11A of the Central Excise Act. That notice was contested by them on the plea that in their classification lists effective from 1-3-1986 onwards they classified the product under subheading 5504.32 of the CETA, and those were approved and accepted by the successive Assistant Collector from time to time. Therefore, the demand raised through the show cause notice is not sustainable against them.

4. The Collector through the impugned order in original accepted the plea of the respondents and dropped the proceedings.

5. Feeling dissatisfied with this order, the Revenue has come up in appeal before this Tribunal.

6. None has come present on behalf of the respondents. The notice sent to them for today's hearing had been received back with the remarks that the firm is lying closed. The matter being old one, we proceed to decide the appeal on merits after hearing Shri V.M. Udhoji, JDR.7. It remains undisputed that the respondents classified their yarn under sub-heading 5504.32 of the CETA. The classification lists which were effective from 1-3-1986, were accepted and duly approved by the successive Assistant Collector. There is nothing on record to suggest that if any review of the classification lists was ever made at any stage before the issuance of the show cause notice to the respondents.

Even otherwise, it cannot be legally said that the respondents did not classify their product under a proper subheading of the Tariff in Assam State Textile Corporation v. CCE, Calcutta, 1997 (93) E.L.T. 382 it has been ruled by the Tribunal that yarn containing 100% acrylic is classifiable under sub-heading 5504.32 of the CETA and not under sub-heading 5504.90. Therefore, the classification of the product was rightly made by the respondents, under sub-heading 5504.32.

8. Resultantly, there is no merit in the appeal of the Revenue and the same is ordered to be dismissed.

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