

Hind Processors Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-06-2000

Reported in : (2000)(69)ECC650

Judge : J T J.H., G Srinivasan

Appellant : Hind Processors

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants processed man-made fabrics. Their classification list effective from 25.4.90 bearing Sr. No. 87/90 was approved on 15.5.90.

The benefit of Notification No. 61 /87 as amended by Notification No.46/90 was claimed by them. In a subsequent classification list effective from 7.11.90 which was approved on 14.12.90 also the benefit of the same notification was taken. 3 show cause notices were issued.

The first was dated 14.9.90 covering the period 20.3.90 to 30.6.90. The second one was dated 8.10.90 covering the period July 90 Sept. 90. The third one was dated 23.1.91 covering the period October, 90 to December, 90. The allegations made were identical. It was stated that the benefit of the Notification was not available due to changes in the Tariff with effect from 20.3.90 whereby all the sub-headings relating to several headings including heading 54 were removed from the schedule to the Additional Duties of Central Excise Act, 1985. The basis for the

allegation was that the cited notification showed the sub-heading 5410.20 which was no longer in the Tariff. The Asstt. Commissioner passed the common order covering all three show cause notices. She observed that in the succeeding budget the error was rectified and therefore, even where the sub-heading did not exist, she allowed the benefit. The department then filed an appeal. The Commissioner (Appeals) reversed the order. He stated that where the sub-heading 5410.20 did not exist, no benefit could be given under the Notification. The present appeal is against this order.

2. The Ld. Counsel submitted that the notification related to additional duties and therefore, sub-heading in the 5th schedule became material which schedule continued to retain the sub-heading as appearing in the said notification.

3. We have seen the preamble to the notification which refers to the schedule the Central Excise Tariff Act, 1985 which does not contain the 5th Schedule. We do not find substance in the submission of the Ld.

Counsel. Shri Pathak's next argument is that the notification cannot be allowed to become redundant. We observe that the law laid down by various courts is that the notification has to be interpreted strictly without trying to assess the purpose to achieve than what is prescribed in it. It is correct that by virtue of the Tariff amendment, the notification ceases to have any meaning. But we are not competent to give a wider meaning to that notification. In holding so, we are guided by the Supreme Court judgment in the case of Hico Products Ltd. . Paragraph 15 is worth to-reproduce: it has already been taken note of that the manufacture and production of all goods in India attract excise duty. Those may be goods specified or goods not specified elsewhere. When specific goods are made exempt from payment of excise duty by a notification under Rule 8 and falling under particular item, it presupposes that they are exempt from payment of excise duty under that item. Those goods may be falling under any of the Items 1 to 67, or instead in the residuary item 68 attracting ad valorem duty as due thereon.

Those goods are exempt from payment of excise duty because of the language of the notification binding it to a particular item and not universally. It is the clarity of the language which governs the issue, not involving any purposive approach.

Interpreted in this manner, the benefit of the notification, in our view, was rightly denied to the appellant.

4. We thus hold that the notification was not capable of extending the benefit taken by the assessee.

5. Shri Pathak now advanced his third argument and that is the ratio given by the Supreme Court in their judgment in the case of Cotspun Limited . In this judgment it has been held that the approved classification list continues till its correctness is questioned by issue of show cause notice. It has been further held that in such a case the demand could only be prospective i.e., from the date of issue of show cause notice.

6. On this argument, we come across the most peculiar situation which we have described in paragraph (1) of our order. The show cause notice dated 14.9.90 and 8.10.90 would have effect from their prospective dates. As far as the period covered thereunder was concerned, it stood covered under the classification list duly approved on 15.5.90. It would, therefore appear that the ratio of the Cotspun Limited judgment would negate the confirmation of the demand under these two show cause notices. It is surprising that after the issue of these two show cause notices, on 7.11.90 also the same Asstt. Commissioner cheerfully proceeded to approve yet another classification list effective from 7.11.90 claiming the same wrong exemption. This list having been approved on 14.12.90, the substantive portion of the third show cause notice would also hit by Cotspun judgment.

7. Shri Pathak's last argument was that the price should be taken as cum-duty price and appropriate reduction should be allowed.

8. On this observation, we allow the appeal and remit the proceedings back to the jurisdictional Asstt. Commissioner for him to calculate the period of demand that would survive. He would thereafter, examine the claim of the cum-duty price and allow appropriate reduction. In this exercise, he would associate the assessee and assessee shall co-operate.