

Pattern Tex Vs. Commissioner of C. Ex. and Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-04-2000

Reported in : (2001)(128)ELT286Tri(Mum.)bai

Appellant : Pattern Tex

Respondent : Commissioner of C. Ex. and Customs

Judgement :

1. There are eight appellants before us against a common order of the Collector of Central Excise, Baroda. By this order, the Collector found that each of the appellants manufactured parts of textile looms and cleared them without payment of duty. He further found that none of them was entitled to the benefit of Notification 175/86 for the reason that they had not filed declaration for obtaining exemption from the operation of Rule 174, which provides for licence for manufacture, and further they were not registered, as provided in paragraph 4 of the notification as small scale industries, by the appropriate governmental authority.
2. We have indicated in the preceding para graph only those portions of the order which are in appeal before us. We are not concerned with the other aspects of the matter, where the Collector has found in favour of the appellants.
3. The common advocate for all the appellants, Mr. Sridharan, contends that the activity carried out by the appellants does not amount to manufacture. He says that none of them had any machinery to carry out any manufacture. What each of

them did was to buy various items, each of which constitute a part of the loom, loosely put them together and supplied them to the manufacturers of looms.

4. After hearing the advocate for the appellant, we are not able to accept this argument in its entirety with regard to such items as hammer set, slay set and timing lattish. Samples were produced before us from which it appears to us, the assembling that was done by the appellants does in fact amount to manufacture at least in some of the cases. For example, where by fitting together by means of bolts, nuts etc. and operations involving riveting various parts are assembled into the main drive set, which component parts is fitted as such in the loom, it would have to be held that what the appellants was to manufacture of sub assemblies, looms and those that activity constitute partial manufacture. According to us, the items so manufactured would be hammer set, William type, Japanese type, slay bags, picking shafts, timing note sheets, main drive set.

5. We have emphasised, in these operations the fact that individual items are put together by means of firm secure fastening to obtain sub assemblies which are put to use as such at the customers premises either to be fitted into the loom or as replacement. Where however, for the sake of convenience of transport, or to avoid damage during such transport, various items are loosely put together, each of these items is either separately fitted or used or by their intended buyer to make sub assemblies it cannot be said that this is marketable. In such a case there can obviously be no manufacture. What is being sent out is merely a loosely assembly parts. Each of these parts might or might not be parts of sub assembly later at any point of time. In the manner in which they are cleared from the factory, there would not be manufacture. Full details of these parts were not made available to us.

Advocate for the appellant undertakes to furnish such details within two months from the receipt of this order to the Commissioner. On such evidence being submitted by the appellant, the Commissioner shall decide whether the process amounts to manufacture or not. This is only limited to goods mentioned in Annexures A, B and C of the impugned order.

6. There then remains the question of availability of the Notification 175/86. The Collector's denial of the notification on the ground that the declaration under Rule

174A cannot be substantiated. There is no requirement in the notification that some such declaration has been filed. The decision of this Tribunal in *Acura Industries Limited v. CCE*, 1992 (58) E.L.T. 98 supports this view. The other reason for the denial was that the appellants were not registered as small scale industrial undertaking as required in paragraph 4 of the notification.

The proviso under this paragraph however did not exempt from this requirement in cases where the value of clearances from the factory during the preceding financial year or in the current financial year did not exceed or was not likely to exceed Rs. 7.50 lakhs or in a case where a manufacturer had been availing of the exemption under Notification 175/86 or any of the 12 notifications specified in the proviso in the preceding year. It is not denied that this criterion in the proviso will not apply to four of the appellants, Pattern Textiles (957/92), Sreedhar Textile (959/92), Frames (962/92) and Surat Textiles (963/92), as the value of clearance in each of them, when they came into existence exceeded this figure, since that was the first date of existence, they could not have availed of either Notification 175/86 or any other small scale exemption notification in the preceding year.

However, the benefit would be available to the remaining three of Supreme (960/92), BIJ Tex (958/92) and Pattern Trust (961/92). The total period for which the demand was issued was 1986-87 to 1988-89.

These three firms Supreme, BIJ Tex and Pattern Trust were in existence before 1986 and Pattern Textiles from April 1988 to June 1989. The value of clearances of Supreme was Rs. 2.05 lacs in 1985-86 and it was therefore to be entitled to in that year to the benefit of Notification 77/85.

7. No doubt, there was no formal application for this exemption for the benefit of exemption at that period. It is however settled law that an exemption notification can be claimed at any stage. A claim now made for the exemption therefore cannot be denied. Since Supreme would be entitled to exemption under Notification 77/85 in 1985-86, it would, by virtue of proviso under clause (b) of paragraph 4 of the notification, be entitled to the benefit for 1986-87 and 1987-88. BIJ Tex and Pattern Trust would be entitled to the benefit of Notification 175/86, one of the three years 1985-88 and Pattern Textile for 1986-87 and 1987-88, since

the value of the clearances in any of these years did not exceed the value of Rs. 7.50 lakhs.

8. As a result of this order, the duty being payable by each of these appellants are to be requantified on determination either of the question of manufacture or the availability of the notification or both. Therefore, penalties if they are liable to be, would also be redetermined.

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