Commissioner of Central Excise and Vs. M/S. Yale Intex

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-15-2001

Appellant : Commissioner of Central Excise and

Respondent : M/S. Yale Intex

Judgement :

1. This appeal is against the order of the Commissioner adjudicating on a notice issued to M/s Yale Intex (respondent to this appeal), a division of M/s Yale Industrial Lubricants Pvt Ltd. The notice alleged that the respondent had cleared towels manufactured by it without payment of duty, demanded duty on towelling fabrics, as well as on the towels manufactured therefrom. The notice also alleged that the respondent had not declared the manufacture of towelling fabric for the year 1993-94. A penalty was also proposed.

2. The respondent submitted before the Commissioner that the export of the goods had taken place. The goods were sent by the respondent to Yale Industrial Lubricants Pvt Ltd at Mumbai from there they were exported under an invoice different from the one under which the respondent sent the goods to Mumbai. The respondent produced a certificate of a chartered accountant. This certificate given details of clearances at Nagpur and subsequent clearances. It certified that tower exported by Yale Industrial Lubricants Pvt Ltd have been manufactured at its Nagpur unit by the respondent and Yale Industrial Lubricants Pvt Ltd has not purchased any towels.

3. It is mainly on the basis of this certificate and the figures in the balance sheet, that the Commissioner has accepted that the entire production of towels manufactured by the exporter. He refers to other collateral evidences such as freight forwarders bills to support this view. He concluded that the towel fabric was not marketable. On the department not having established this he set aside the duty demanded from it. This is appealed by the department.

4. It appears to us that the exemption that was granted from licensing to the respondent was itself incorrect. Rules 12 and 13 provide for export respectively finished product and of the goods used in the manufacture of the finished product. Export of these goods without payment of duty does not amount to an exemption from duty. There is no specific exemption to export under Rule 8 or later under Section 5A of the Ac. The Courts and the Tribunal have consistently been held the view that clearances under bond or under the claim for rebate of duty are not exempted clearances. Apart from this, the Commissioner's order is sketchy and lacking in details. The respondent's claim is that the goods manufactured by it were exported by Yale Industrial Lubricants Pvt Ltd. The evidence of export of goods by the latter would be available in the form of shipping bills and other such documents.

Evidence of supply of goods by the respondent to the firm at Mumbai would be available by way of lorry receipts, invoices etc. From these, it could easily be established, as to how much of the production of the respondent was actually exported, and how much not. Unfortunately the department's appeal, does not, so often, contain the details and copy of the chartered accountant's certificate and other documents as the Commissioner relies upon. The respondent also is absent and unrepresented despite notice. However, as we have noted, the Commissioner's order does not look into this aspect, which he ought to have done.

5. Accordingly, we allow the appeal, set aside the impugned order and remand the matter to the Commissioner. He shall adjudicate the matter afresh in accordance with law and pass a clear reasoned order.