

Collector of Central Excise Vs. Sunrise Woollen and Silk Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-26-1985

Reported in : (1985)(5)LC1910Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Sunrise Woollen and Silk Mills

Judgement :

1. In this appeal filed under the orders of the Collector of Central Excise, Chandigarh, the short point is whether the respondents, who during the period 1-3-78 to 31-7-78 were manufacturers of embroidered cotton fabrics, paying duty at the compounded levy rates fixed by Notification No. 85/71, dated 29-5-71, were also liable, in addition, to pay special excise duty in terms of Section 37(1) of the Finance Act, 1978. The amount involved during the above-mentioned period was Rs. 444.39, as held by the Assistant Collector of Central Excise, Amritsar. In appeal, the Collector of Central Excise (Appeals), New Delhi accepted the contention of the appellants that the payment by them of the amount fixed under Rule 96-ZI amounted to a discharge of their total duty liability and that no further duty was payable by them. It is against this order that the present appeal had been filed.

2. Appearing before us for the appellant Collector, Shri Verma reiterated the submissions contained in the memorandum of appeal. These are basically that in accordance with Section 3(1) of the Central Excises and Salt Act, a duty of excise at the rates specified in the First Schedule to that Act is to be levied and collected

on all excisable goods. Under Section 37(1) of the Finance Act, 1978, there was to be levied and collected on all excisable goods a special duty of excise equal to 5% of the amount of duty chargeable thereon under the Central Excises and Salt Act, 1944 read with any relevant notification.

Section 37(3) of the Finance Act, 1978 made it clear that the special duty of excise was to be in addition to the basic duty leviable under the Central Excises and Salt Act, 1944.

3. Shri Verma submitted that the Central Excise Rules have been framed by Government in exercise of its powers under Section 37 of the Central Excises and Salt Act with the object of carrying into effect the purposes of the said Act which pertains to basic excise duty. Rule 96-ZI provides for the compounded levy rates to be fixed by the Central Government by a notification and payment of the sum at the rates so fixed shall be a full discharge of the manufacturers' liability for the duty leviable. Such rates have been fixed by Government under Notification No. 85/71, dated 29-5-71 as amended.

4. The word "duty" has been defined in Rule 2(b) as "the duty payable under Section 3 of the Act." Under Rule 2(i) *ibid*, "the Act" means the Central Excises and Salt Act, 1944." In view of this definition, the reference to duty in Rule 96-ZI and the notification issued thereunder would mean only the duty leviable under Section 3 of the Central Excises and Salt Act, 1944. In support of this contention Shri Verma pointed out that Notification No. 85/71 specifically referred to the "rate of duty". Therefore, the payment of duty at the rate fixed under Rule 96-ZI would not be a discharge of the manufacturers' liability for the duties leviable under any other enactment, such as the special excise duty leviable under the Finance Act, 1978.

5. Shri Verma submitted that there was no notification in existence during the material time granting exemption from the special excise duty to embroidered cotton fabrics produced in a factory working under the compounded levy scheme set out in Rule 96-ZI and accordingly special excise duty was payable in addition to the amount payable in terms of that Rule and the notification thereunder. In support of this view, he submitted that in the case of Khandsari Sugar, the Central

Government had issued two separate notifications under Rule 92-B of the Central Excise Rules, fixing separately thereunder the compounded rates of basic excise duty and additional excise duty.

6. Shri Verma further submitted that the hon'ble Supreme Court, in a decision announced on 30-9-1984 on a batch of appeals filed by various importers of VISCOSE staple fibre and tow against the judgments of the Delhi and Kerala High Courts, had held that notifications exempting imports of specific products from customs duty did not automatically extend to the additional or countervailing duty under the Customs Tariff Act, 1975 and the auxiliary duty under the Finance Act. The ratio of this judgment was equally applicable to the various types of excise duties leviable on excisable goods under different enactments.

Shri Verma was not able to give the citation of the Supreme Court judgment relied upon by him but promised that it would be furnished as soon as possible after the hearing.

7. From the above reasons, Shri Verma submitted that the order of the Assistant Collector was correct and that the order of the Collector (Appeals) which set aside the Assistant Collector's order, should itself be set aside and the Assistant Collector's order restored.

8. For the respondents, their learned Consultant, Shri Mathur submitted that under Section 3 of the Central Excises and Salt Act, the duties to be levied were the duties at the rates set forth in the First Schedule to the Central Excises and Salt Act. In the case of embroidered fabrics to which the Rule 96-ZI was applicable, what was payable was a compounded levy. This was governed by the notification issued in terms of that Rule. The rates laid down in the notification were not shown in the First Schedule to the Central Excises and Salt Act. According to Shri Mathur, the special excise duty under Section 37(1) of the Finance Act, 1978 would not become applicable to such a compounded levy which was not in the First Schedule but was levied in terms of a notification under Rule 96-ZI. In support of this contention Shri Mathur referred to the judgment of the Delhi High Court in the case of Modi Rubber Ltd. v. Union of India and Ors. (1983 E.L.T. 24). In that case the Hon'ble Delhi High Court had before it a notification which granted

exemption "from so much of the duty of excise leviable thereon as is in excess of...". It had been held that this would be the sum-total of the duties of excise leviable under all statutory provisions whether termed as the basic duty of excise or special duty of excise or additional duty of excise or auxiliary duty of excise. He, therefore, submitted that the sum paid by the respondents in terms of Notification No. 85/71 under Rule 96-ZI represented the total amount payable by them and there could not be any question of their having to pay a special duty of excise over and above that sum. According to him the order of the Collector (Appeals) was correct and the present appeal deserved to be rejected.

9. We have given our careful consideration to the arguments of both sides. We have had to face an unusual difficulty in this case. As stated in para 6 above, Shri Verma had relied on a decision said to have been given by the Hon'ble Supreme Court on 30-9-84. His submission in this regard is based on a similar submission figuring as ground No.(viii) of the Collector's appeal. However, neither the citation nor the particulars of the appeal were given in the Collector's appeal, nor could Shri Verma furnish them. He had, however, undertaken to do so as soon as possible after the hearing of the appeal. That was nearly 5 months ago. We have not so far been furnished with the particulars of the relevant decision. We find that the learned representative of the Department had addressed both the Assistant Collector of Central Excise, Amritsar, who had filed the appeal, and (by name) his superior officer, the Collector of Central Excise, Chandigarh, requesting particulars of the appeal and making it clear that the Bench desired to have particulars of the judgment. There appears to have been no response to these communications from the Senior Departmental Representative to the Assistant Collector and the Collector, and we have not so far been furnished with the particulars of the Supreme Court decision.

10. We are constrained to express our surprise over this situation. We do not wish to comment further on this except to say that any appellant who takes a particular plea in a legal matter should be prepared to substantiate it when called upon to do so. This is particularly applicable to Government officials who file appeals in their capacity as public servants. For our part, we have not been able readily to lay hands on any such judgment. We do not consider that it would be proper to make

an extensive enquiry to find out such a judgment, when the appellant himself does not take the trouble to give the citation. We are, therefore, disposing of this appeal on the basis of whatever other material has been placed before us.

11. The Collector's basic argument is that what is paid in term of Rule 96-ZI and Notification No. 83/71, dated 29-5-1971 as amended, is the duty in terms of Section 3 of the Central Excises and Salt Act and that under Sub-sections (1) and (3) of Section 37 of the Finance Act, 1978, the special duty is distinct from, and in addition to, this basic duty.

As against this, the argument of the respondents is that the sum payable in terms of Rule 96-ZI and the notification thereunder is the entire amount payable and no special duty is payable in addition. On this question, we find that there is substance in the argument put forward by Shri Verma. No doubt, Rule 96-ZI refers to the payment of "a sum". However, this sum is paid in discharge of the manufacturers' liability for the duty leviable. As pointed out by Shri Verma, under Rule 2(v) of the Central Excise Rules, the term "duty" means the duty payable under Section 3 of the Act. The Act itself, according to the preamble, has been enacted "to consolidate and amend the law relating to Central duties of excise..." Section 3 provides for the levy and collection of duties of excise on excisable goods at the rates set forth in the First Schedule. No doubt the rules framed under Section 37 have a wide sweep, but these rules are made "to carry into effect the purposes of this Act," which are stated in the preamble. We do not, therefore, think that there is any force in the contention that what is paid in terms of Rule 96-ZI is something other than the duty of excise, merely because the Rule itself refers to what is paid as "a sum".

Further, as pointed out by Shri Verma, the rules have to be read along with the notifications thereunder. Notification No. 85/71, dated 29-5-1971, as amended, clearly states that what is paid in terms of that notification is a duty. This is seen from the operative part of the notification which reads as under :- "...The Central Government hereby fixes, for embroidery machines utilised for manufacturing, from each variety of fabrics specified in column (ii) of the table below, embroidery..., the rate of duty specified in the corresponding entry in column (iii)

thereto ..." 12. We have emphasised the term "duty" in the above operative Clause.

The same term "duty" is repeated in the table, where the heading of column (iii) reads as under :- "Rate of duty per metre length of the machine per shift. Then again there are 3 provisos, each of which refers to "the rate of duty per metre length". From the above it would be amply clear that what is payable in terms of Notification No. 85/71 is nothing but a duty of excise. It is leviable by virtue of the Central Excises and Salt Act, 1944 and the rules and notifications thereunder. No doubt, it is not at the rate of specified in the First Schedule to that Act, but it must be taken as that duty modified by the notification under Rule 96-ZI; in other words, the ceiling rate of duty would be that in the First Schedule but it would stand reduced by the notification issued under Rule 96-ZI, in the same manner as in other cases it would be the ceiling rate as in the First Schedule reduced by a notification under Rule 8(1). Clearly, therefore, the sum which was paid by the respondents was the duty chargeable thereon under the Central Excises and Salt Act read with the relevant Notification No. 85/71 of the Central Government. Having regard to the provisions of Sub-section (3) of Section 37 of the Finance Act, 1978, the special duty of excise was leviable in addition to the basic duty represented by the compounded levy under Rule 96-ZI.13. In this connection it would be of interest to reproduce Sub-section (1) of Section 37 of the Finance Act, 1978. This runs as follows:- "37. (1) In the case of goods chargeable with a duty of excise under the Central Excises Act as amended from time to time, read with any notification for the time being in force issued by the Central Government in relation to the duty so chargeable, there shall be levied and collected a special duty of excise equal to five per cent, of the amount so chargeable on such goods." It will be seen that the special duty of excise is to be equal to five per cent of "the amount so chargeable on such goods". Even if stress is placed on the use of the word "sum" (as distinct from "duty") in Rule 96-ZI, there can hardly be any distinction between the terms "sum" and "amount".

14. Shri Mathur had sought to rely on the judgment of the hon'ble Delhi High Court in the case of Modi Rubber Ltd. That judgment, no doubt, laid down that where the reference is simply to "duty of excise" it would cover all duties of excise, whether

the basic duty or the special duty or any other variety of excise duty. But, that judgment clearly has no application to the present case where Section 37 of the Finance Act, 1978 clearly differentiates between the duty of excise under the Central Excises and Salt Act and the special duty under Sub-section (1) of Section 37 of the Finance Act, 1978.

15. For the reasons given above, we consider that the order of the Collector of Central Excise (Appeals) was wrong and that special excise duty was correctly demanded in the order of the Assistant Collector of Central Excise. We accordingly allow this appeal, set aside the order of the Collector (Appeals) and restore the order of the Assistant Collector in so far as it held that in this case a special duty of excise was leviable in addition to the basic duty and with reference to that basic duty, this being the same as the "sum" calculated with reference to Rule 96-ZI and the notifications thereunder.

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