

Karmayogi Dyeing Pvt. Ltd. and Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-13-2002

Reported in : (2002)(105)LC130Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Karmayogi Dyeing Pvt. Ltd. and

Respondent : Cce

Judgement :

1. All these appeals except, one by Kamal Dye and Plastic Works are by Karmayogi Dyeing Pvt. Ltd. This appellant is a processor of fabrics.

The notices issued to it alleged short payment of duty on the fabrics processed by it on job work. The basis for the allegation was that the value of the grey fabric which it processed, which formed a component in the assessable value of the processed fabric, had been underdeclared. This allegation was supported by statement of various persons who handed over the grey fabrics to the appellant for processing, accepting that the prices that they declared to the processor were lower than the actual prices than they paid for the fabrics. In reply to the show cause notice, the processor did not dispute that the value of fabrics was underdeclared but contended that it was not liable to pay duty and that liability fell upon the supplier of the grey fabric.

2. The adjudicating authority accepted this argument to some extent. He said that the "merchant manufacturer", the owner of the fabric is in fact the manufacturer of the goods in terms of Section 2(f) of the Act and he "hires the labour of the independent processor for manufacture of excisable goods." But he noted that the "principal manufacturer" has authorised a processor, "who actually manufactured the excisable goods" to comply with the procedural formalities. He therefore concluded that the initial liability to duty will be on the "merchant manufacturer" and in case that person fails to discharge the duty, it will pass on to the processor. He found that the penalty could be imposed both on the principal manufacturer or the agent. He therefore imposed a penalty both on the supplier of the grey fabrics and under Rule 173Q(1)(a) on the processor. The Commissioner (Appeals) declined to interfere with these on appeal by the processor. He noted that the job worker was having the knowledge of the facts for justification of the penalty and dismissed the appeal. Hence these appeals.

3. The contention of counsel for the appellant are these. It is a job work processor. It had no interest in the fabrics that it processed other than recovering its job charges and profit. The appellant declared the cost of the grey fabric as communicated to it by the supplier of it in accordance with the instruction contained in circular No. 29/24/94 CX dated 21.3.1994 of the Board. Collusion between appellant and the suppliers of the grey fabric is not alleged. The extended period of limitation contained in the proviso under Sub-section (1) of Section 11A cannot be invoked against the appellant.

It had declared to the department the values along with the price list and there is no suppression or mis-declaration by it. Case law is cited in support.

4. The departmental representative contends that the Asst. Commissioner noticed that in some case the appellant did not declare the goods at all and it therefore cannot be said that it had declared the value.

5. No appeals have been filed before us by the supplier of the fabric.

Subsisting case law supports the proposition made by the appellant with regard to its liability to pay duty. In its decision in ITC Ltd. v. Collector, the Tribunal had held

that the job worker is not liable to pay duty on account of incorrect statement as to the value by the supplier of the raw material. It noted that the job worker in fact declared and printed the maximum retail price on the package of the cigarette that it manufactured (which was the basis for the assessment), since he was not the owner of the goods and he could only look to the supplier of the raw materials. This decision has been followed in *GTC Industries v. CCE* here concerned not with the assessable value based on maximum retail price, the principle would hold true so far as the extended period is concerned. We are mindful of the fact that it is the job worker, being the manufacturer on whom the primary duty liability should fall.

However, as the bench in *ITC Ltd.* pointed out it was by the Judgment of the Supreme Court in *Ujagar Prints* 1987 (10) ECR 640 (SC) : ECR C 1057 SC : 1988 (19) ECR 575 (SC) : ECR C 1281 SC that reversed the traditional view taken by the department that it is the job worker who is the manufacturer. "The *Ujagar Prints* clarification order protects the job work and product to ad valorem duty on the basis of the declaration of the wholesale price made by the supplier to the job worker." 6. The departmental representative contends that the Commissioner has recorded in his orders that the processor did not file the declaration under Rule 173C. In such cases, it can be inferred from the failure to file the declaration that there was intent to evade duty. It appears from the reply that the counsel for the appellant gave expressing the difficulty involved in filing a price declaration for each lot, that price lists in fact had not been filed for each lot. If, in point of fact, the processor does not file the declaration that he is required to file under Rule 173C, the processee being the manufacturer has not filed the declaration under Rule 173C and does not furnish acceptable reasons for not doing so, it would be difficult to say, in a situation where the value declared was admitted lower than what it ought to have been, that there was no intent to evade duty. However, this point appears to us to be clearly beyond the notices and the orders of the Addl. Commissioner. None of the notices, which are identically worded, alleges failure by the processor to file the declaration. Each of them in terms says that the processor "accepted false/fake bills which was submitted to the department along with the price declaration file under Rule 173C of Central Excise Rules, 1974.... The bogus or false/fake and mis-stated price mentioned therein were within the

knowledge of the processor, M/s. Karmayogi Dyeing Pvt. Ltd. who evaded the appropriate amount of Central Excise duty with collusion with the merchant manufacturer." 7. In each of the orders, the Additional Commissioner exonerates the processor of any knowledge of the falsity of the bill for the grey fabric. He does not give any finding on the allegation of its collusion with the supplier of the grey fabric. As we have noted, his order demands duty in the first instance not from the processor but from the supplier of the grey fabric holding him to be the manufacturer; it is only in the event of the failure of the supplier to pay duty that he says its liability will fall on the processor. The merchant manufacturer of the department not having come up in appeal against this finding, we are not concerned with its correctness. The Additional Commissioner finds that the processor was not liable to penalty under Section 11AC of the Act because it did not have any intention to evade duty. In each of these order, he says, "with regard to penalty under Section 11AC that it would be against the basic tenets of law...if an agent is penalised even if it is proved that he was innocent and it was the principal who had acted with mala fide intentions." Earlier in his order, he has referred to the supplier of the fabric as principal or principal manufacturer and the processor as his agent. He says further on that either the "merchant manufacturer" or "independent processor" has to be absolved on liability to penalty under Section 11AC, quoting the provisions of the Section to say that it requires intent to evade payment of duty to be established. Thereafter he says "it is abundantly clear from the statements recorded under Section 14 of the Central Excise Act, 1944 (as reproduced in the SCN) that it was the merchant manufacturer who had tried to defraud the department." He concludes that the processor has not committed an act with intent to evade duty but in the absence of mens rea penalty can be imposed on him under Rule 173Q.8. His order therefore admits of no conclusion other than that he finds that the processor did not act with intent to evade duty. This conclusion has not been challenged by the department. That being the case, it is not possible for us to hold based on the submission that the departmental representative that the processor had intent to evade duty. Accordingly, the extended period of limitation will not be available to the department.

9. The remaining appeal E/1590/96 is by Shree Kamal Bleaching and Printing Works against the order of the Commissioner demanding duty on the fabrics

processed by it. Notice dated 15.7.1991 demanded duty on fabrics which it processed. The appellant had classified the goods under heading 52.06 of the Tariff, stating its composition 64% of cotton and 36% polyester. The notice proceeded on the footing that it is of the blend of the fabric showed it to be 52% cotton and 48% polyester and hence classifiable under 52.09 at a higher rate of duty than that application to goods classifiable under heading 52.06. The fabrics in question were cleared during the period from 10.5.1992 to 31.10.1992 and the notice invoked the extended period of limitation.

10. In the impugned order, the Commissioner has refused to accept the contention of the assessee that the declaration that it made of the composition of the fabric was based on the composition indicated to it by the processor, who sent the fabric to him for processing. He has said that it is for the appellant to claim damages or initiate action against the person who initially process the fabric but it is the responsibility of the processor to pay the correct duty.

11. This however does not answer the question as to the applicability of the extended period of limitation. The show cause notice does allege misdeclaration by the assessee of the blend of the fabric. If however, the declaration of the fabric of the blend by the processor was based on the declaration given to it by the supplier of the grey fabric and in the absence of anything to say that the processor colluded with the wrong declaration or was aware that it was wrong, the extended period of limitation will not be available. There is nothing in the order or the notice to say or suggest this to be the case that the extended period of limitation will not be available, and demand is therefore barred by limitation.

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