Oswal Yarns Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-25-2003

Reported in : (2003)(89)ECC317

Judge : K Usha, N T C.N.B.

Appellant : Oswal Yarns

Respondent : Cce

Judgement :

1. This is an appeal at the instance of the assessee challenging the order passed by the Commissioner of Central Excise, Chandigarh dated 28.3.2002. Under the above order the Commissioner had confirmed the duty demand of Rs. 27,03,952 under Rule 9(2) of the Central Excise Rules read with Section 11A of the Act. He also imposed a penalty of an equal amount and directed to pay interest under Section 11AB. Aggrieved by the above'the assessee has come up in appeal.

2. The assessee is engaged in the manufacture of woollen yarn in their Unit No. II from March 1995. The dispute relates to Unit No. I where they were undertaking manufacture of shoddy yarn out of mutilated synthetic rags, hosiery cuttings. They had not taken Central Excise registration in respect of Unit No. I and had been effecting clearances thereof without payment of Central Excise duty. Pursuant to visit by the Central Excise officers, show cause notice dated 16.3.99 was issued. It is alleged therein that shoddy yarn being manufactured out of mutilated synthetic rags, hosiery cuttings etc. would come under Heading 55.09 in view of Chapter

Note 3 to Chapter 55. Period covered by the show cause notice was 1.4.94 to 31.10.95. It was alleged that during the relevant period the assessee had used synthetic waste after carding etc. Sample of the yarn drawn from a lot of 57.00 kg. On 27.3.96 confirmed pre-dominance of synthetic material in it.

3. It was contended before the Commissioner that duty demand for the period prior to 26.5.95 cannot be sustained as during that period Heading 55.09 related to MM fabrics and not yarn. It was also contended that the extended period of limitation invoked is not sustainable in this case since the officers of the department were very well aware of the activities carried on in Unit No. II of the assessee since they were visiting frequently Unit No. I which is a registered unit.

Correctness of the test report of the sample drawn on 27.3.96 was also disputed. It was also submitted that the demand has been wrongly calculated without according abatement of element of duty from the value of impugned goods which is contrary to the decision in the case of Srichakra Tyres Ltd. v. CCE, Madras, 2002 (80) ECC 588 (T) : 1999 (108) ELT 361. The assessee further pointed out that the provisions of Section 11AB is not attracted in the present case as the period of demand was from 1.4.94 to 31.10.95.

4. The Commissioner rejected all the contentions raised by the assessee.

5. We heard learned Counsel for the appellant as well as learned Departmental Representative. The appellant contended that the entire demand is unsustainable on the ground of limitation for the two reasons, namely, (i) the departmental officers were aware of the manufacturing activity going on in Unit No. II of the appellant and that the appellant was under a bona fide belief that yarn of synthetic rags cannot be treated as yarn of synthetic fibre. This was bona fide impression of many of the manufacturers in the industry. Learned Departmental Representative pointed out that there is no merit in the contention raised by the appellant that extended period of limitation cannot be applied in this case. The fact that the appellant is having another registered unit where officers of the department were making visits cannot take us to the conclusion that they were aware of the manufacturing activity carried on by the assessee in Unit No. II. The appellant had not been able to substantiate its contention that there was a bona fide impression

entertained by the appellant as well as similar manufacture that the product is not liable to excise duty. On the other hand, reference to the communication between the Association and the Department would clearly show that the industry was very well aware of the durability of the product. We therefore find that the Commissioner is justified in coming to the conclusion put forward on behalf of the appellant regarding limitation.

6. We find merit in the contention raised by the appellant that duty should have been calculated on the basis of the ratio of the decision in Srichakra Tyres Ltd. v. CCE, Madras, 2002 (80) ECC 588 (T) : 1999 (108) ELT 361. During the submission before us it was contended on behalf of the appellant that it was entitled to the benefit of exemption under SSI notification. After hearing both sides we directed the appellant to submit a calculation showing the clearances from 26.5.99 onwards. The calculation submitted before us would show that the duty liability of the appellant would be only Rs. 7,28,540. Since no mistake in the quantum of duty was pointed out by the learned Departmental Representative on the above calculation we accept the above figure as correct quantum of duty payable by the appellant.

Appellant is justified in its submission that the provisions of Section 11AB and 11AC would not be applicable in the present case as those provisions were brought into statute much after the period of demand under show cause notice dated 16.3.99. We, therefore, reduce the quantum of duty demand to Rs. 7,28,540 and set aside the direction to pay interest under Section 11AB. Penalty is imposed under Section 173Q, but we reduce the amount to Rs. 2 lakhs. The appeal is thus partly allowed.