

**Commissioner of Central Excise Vs. Asia Textiles and Zenith Weaves**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Jun-17-2003

**Reported in :** (2004)(93)ECC244

**Judge :** J Balasundaram, S T C.

**Appellant :** Commissioner of Central Excise

**Respondent :** Asia Textiles and Zenith Weaves

**Judgement :**

1. The above appeals involve a common issue and are hence heard together and disposed of by this common order.

2. Both the respondents here in are engaged in the manufacture of texturised/crimped yarn falling under Chapter heading 54.03 of the schedule to the Central Excise Tariff Act, 1985. Small Scale Notification No. 1/93 dated 28/02/93 was amended by Notification No.90/94 dated 25/04/94 incorporating the goods falling under above mentioned chapter heading as "specified goods" for the purpose of S.S.I benefit which was claimed by the respondents. Subsequently, vide Notification No. 23/94-CX (NT) dated 20/05/94, Rule 56A was deleted from the Central Excise statute and modvat benefit was extended to the product covered by chapter heading 54.03 by Notification No. 24/94 dated 20/05/94. The department was of the view that since the Notification No. 1/93 was effective from 01/04/94, clearances from this date should be computed and not only from the date when the assesses/respondents opted for the benefit of the notification. On

this basis, show cause notices were issued for recovery of the differential duty during the period after first clearance value of Rs. 50 lakhs was crossed. The demand was confirmed by the adjudicating authority against whose orders appeals were filed. The Commissioner (Appeals), the lower appellate authority set aside the order of the adjudication holding as under :- "The impugned orders and the submissions have been considered by me.

The concessional rate of duty was availed from June, 1994 after filing the classification list in which the benefit of concessional rate of duty under notification 1/93 was claimed by the appellants.

On the other hand the lower authority, in the impugned orders referred to above, granted concessional rate of duty by taking into account the clearances from 1.4.94, which is not correct. Till 25.4.94 the goods falling under heading 54.02 were not specified goods. They became specified goods only from 25.4.94. The appellants by and large were availing the 56A benefit Since 56A is not recognised for purposes of the benefit of concessional rate of duty envisaged under para 1 (a) (i), the benefit is not available to the appellants. With effect from 20.05.94 only when the products falling under 54.03 were recognised as specified goods in terms of notification issued under Rule 57A for purposes of modvat credit and with the deletion of Rule 56A, the products cleared by the appellants became eligible for modvat credit read with concessional rate available under notification 1/93. It is observed in these two appeals that the appellants filed the classification list from June, 1994 onwards. Since in respect of the clearances made from 1.4.94 the appellants did not claim the benefit of notification 1/93 and the same was claimed from June, 1994 only and that the benefit is in fact available from 20.5.94 only, the concessional rate of duty in terms of para 1 (a) (i) or 1 (a) (it) read with (b) and (c) is available with effect from June, 1994 only. However, for computing the over all clearances of Rs. 2 crores, the clearances made during 1.4.94 till the date of filing of the classification list should have to be taken into account. Accordingly the impugned order computing the clearances from 1.4.94 for concessional rate of duty when the goods were not specified goods with modvat facility is not in order and maintainable. Accordingly, the impugned orders are set aside and I allow the appeals.

3. Hence, these appeals by the Revenue, which contends that the relevant date for computation should be 1<sup>st</sup> April 94, which is the date of commencement of the financial year.

4. We have heard both sides. We find that this issue was the subject matter before the Tribunal in the case of Dhanlaxmi Texturisers vide Order No. C-II/1529-54/WZB/202 dated 18/05/2002 the Tribunal held that the clearance of the goods in question should be covered by the notification 1/93 with effect from 25/04/94, which is the date on which the goods were specified in the table to the notification. The assessee appealed against this order of the Tribunal to the Hon'ble High Court which vide order reported in 2003 (55) RLT 873 (Guj) set aside the Tribunal's order and held that "this Court issue a writ of certiorari and quash and set aside the impugned dated 18th May 2002, passed by the CEGAT in Appeal Nos. E/506 to 522, 524 to 528/97. This Court, therefore, issue a writ of mandamus and declare that the actual effect of the benefit of Notification No. 1/93 was available to the manufacturer only from 20th May, 1994. This Court also hold that the petitioners were entitled the benefit of Notification No. 1/93 by computing the value of clearance from the date on which the petitioners opted for this exemption in the year 1994-95. In view of the same, the Special Civil Application is allowed to that extent. Rule is made absolute with no order as to costs." 5. Following the ratio of the Hon'ble Gujarat High Court's judgment cited supra, we hold that the benefit of the notification is available to the assessee from 20/05/94 and that they are entitled to the benefit of the notification by computation of the value of clearances from the date on which they opted for the exemption in 1994-95 viz., 17<sup>th</sup> June 94.

6. The appeals are disposed of as above. Cross objections are disposed of accordingly.

I have carefully gone through the decisions recorded by my learned Sister in the case of Asia Textiles and another as well as in the case of Marmo Texturisers and others. The common issue in all these appeals filed by Revenue against as many as 59 respondents involves interpretation of the expression "first clearances of the specified goods upto an aggregate value not exceeding rupees thirty lakhs"

appearing in Notification No. 1/93-CE dated 28/02/1993. This expression is preceded by the expression "cleared for home consumption on or after the 1<sup>st</sup> day of April in any financial year". The aforesaid notification provides a general scheme of exemption to the small scale sector and applies to numerous specified goods. It is possible that one assessee may manufacture and clear more than one specified goods. The entitlement to exemption is based on annual value of clearances and 'rupees thirty lakhs' refers to the first slab of exemption. Full exemption is available to this slab if no modvat credit of input duty is availed under Rule 57A, otherwise the duty is reduced by 10 percentage points.

The issue gets a bit complicated in the case of the impugned goods which have been added to the list of specified goods w.e.f. 25/04/1994 and not from 01/04/1994. The law-makers have not made it any easier by making the impugned goods modvatable w.e.f. 20/05/1994. Till then the respondents availed input duty credit under Rule 56A and hence could not avail exemption under Notification No. 1/93-CE. The question that has been raised centers around the date from which the slab of Rs. 30 lakhs should be counted. The choices are:- (ii) 25/04/1994 being the day the impugned goods became specified goods.

(iv) A subsequent date on which a respondent chose to avail of the small scale exemption.

In case the slab of Rs. 30 lakhs is counted from a date prior to a respondent opting for the exemption, the slab of exemption available to him would get reduced to the extent of duty paid clearances made by him till that date. There are a number of decisions of different Benches of the Tribunal on the issue, but it would suffice to refer to the Larger Bench decisions here. In the case of Ramakrishna Engg. Works v. CCE, Bolpur - 1996 (83) E.L.T. 346 (Tribunal), the Larger Bench following a reasoned decision of the Honourable Madhya Pradesh High Court in the case of B.K. Rubber Industries (P) Ltd. v. UOI - 1993 (68) E.L.T. 575 (M.P.) ruled that the slab of Rs. 30 lakhs has to be chronologically computed from the 1<sup>st</sup> day of April including clearances of duty paid goods. This decision considered and over-ruled the earlier decision of the two Member Bench in the case of Watts Electronics Pvt. Ltd. v. Collector - 1994 (70) E.L.T. 127 (Tribunal) which allowed computation of the

slab from the date of availing the exemption.

It is, however, a fact that Ramakrishna (Supra) did not consider a case where the goods were specified after the commencement of a financial year. Such a situation has been addressed after taking into account several conflicting decisions by another Larger Bench recently in the case of CCE, Coimbatore v. Marutham Textiles (P) Ltd. - 2003 (153) E.L.T. 219 (Tri-LB)., The Bench has noted that Revenue has accepted the non-includibility of duty paid clearances from 01/04/1994 to 24/04/1994 in the slab of Rs. 30 lakhs. It has, thereafter, proceeded to decide that the slab of Rs. 30 lakhs should be computed w.e.f. 25/04/1994 relying on the Apex Court decision in the case of Pankaj Jain Agencies v. UOI - 1994 (72) E.L.T. 805 (SC). It has also specifically ruled out computation of the Rs. 30 Lakhs slab from a subsequent date of availing the exemption following the decision in Ramakrishna (Supra) and B.K.Rubber Industries (Supra).

In the case of Gandhilon Texturisers and Anr. v. UOI (Special Civil Application No. 11966 of 2002), the Honourable Gujarat High Court has referred to its earlier order in the case of Dhanalaxmi Texturisers - 2003 (55) R.L.T. 873 (Guj.) and has stated that "the Tribunal was in error in taking a different view than the one which it had taken in the case of Watts Electronics Pvt. Ltd. v. Collector of Central Excise and in the case of Shree Cables & Conductors Ltd. v. Commissioner". It is, however, pertinent that the learned counsels from either side do not appear to have brought to the notice of the Honourable Gujarat High Court the following:- (1) Watts Electronics (Supra) was no longer good law as it was over-ruled by a Larger Bench of 3 Members in Ramakrishna (Supra) following the Honourable M.P. High Court's reasoned order in B.K. Rubber Industries (Supra).

(2) The decision in Shree Cables and Conductors Ltd. was rendered by the learned Single Member who had no jurisdiction to decide a case involving determination of rate of duty.

(3) The said learned Single Member was also in error in applying the ratio of Watts Electronics (Supra) which was earlier over-ruled by a 3 Member Bench including him in Ramakrishna (Supra).

(4) The decision of the Apex Court to dismiss civil appeal against Tribunal's decision in Shree Cables and Conductors Ltd. by a non-speaking order leaves open the question of correctness of the said decision. [Apex Court's decision in the case of CCE v. Technoweld Industries - 2003 (155) E.L.T. 209 (SC) (Paragraph 5) supports this view].

In view of the foregoing, I am unable to concur with the decision recorded by my learned Sister that computation of Rs. 30 lakhs slab should be from the date the respondent opted for the exemption. In my opinion, the decision of the Larger Bench in the case of CCE, Coimbatore v. Marutham Textiles is squarely applicable to the present appeals, in terms of which the computation of Rs. 30 lakhs slab has to be done from 25/04/1994. I order accordingly.

The following difference of opinion is placed before the Hon'ble President for reference to 3<sup>rd</sup> Member: Whether the benefit of Notification No. 1/93-CE dated 28/2/93 is available to the assesseees with effect from 20/5/94 and value of clearances is required to be computed for this purpose, from the date on which the assesseees opted for exemption in 1994-95, as held by Member (Judicial) the value of clearances is required to be computed from 25/4/1994, as held by Member(Technical).

1 The question in this reference, to me, for decision is computing the value of clearances under Notification No. 1/93-CE when the assessee's product manufactured was declared as specified goods only with effect from 20.5.1994 under the said notification.

2. After hearing both sides, and considering the issues, and having the benefit of the order of the learned Members, it is found: Ram Krishna Engineering Works v. CCE 1996 (83) ELT 346, the goods were declared as specified goods right from 1.4.1994 unlike in this case with effect from 25.4.1994. This question was determined by the subsequent Larger Bench decision in the case of CCE, Coimbatore v. Marutam Textiles (P) Ltd. 2003 (153) ET 219, wherein the larger bench held that amounts paid by the respondents as duty of excise on cotton yarn in that case cleared from 25.4.94 till they started availing the benefit of Notification No. 1/93-CE (as amended) would not be recognized as duty of excise and were to

be treated as bare deposits of money lying with the Government, after following the Board's Circular No 2/91-CX-3 dated 4.1.1991. This being the larger bench's decision, would be applicable in the facts of this case also.

(b) In my opinion, the duty of excise paid from 1.4.1994 till 19.5.1994 cannot be reckoned for determining the first clearance of specified goods for home consumption in the financial year 1995-96.

Similarly, if any appellant has opted subsequent to 20.5.1994 for the benefit of Notification No. 1/93-CE, they would be entitled to the benefit of the notification as held by the Gujarat High Court in *Dhanlakshmi Texturisers v. CCE 2003 (55) ELT 873* as arrived at by the learned Member (Judicial) in paragraph 5. Since the larger bench in the case of *CCE, Coimbatore v. Maruthan Textiles Pvt. Ltd. (supra)* has considered the duties paid, after the date of the goods being specified, up to the date of option of entry, the benefit of Notification No. 1/93-CE, as deposits, I would answer the reference as held by the Hon'ble Member (Judicial).

3. The matter may now be placed before the referring bench for final decision.

We hold that the benefit of Notification No. 1/93 dated 28/2/93 as amended, is available to the assesseees from 20/5/94, and that they are entitled to the benefit thereof by computation of the value of clearances, from the date on which they opted for the exemption in 1994-95.

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