

Ganga Spinning and Weaving Mills Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-13-1983

Reported in : (1983)LC1135DTri(Delhi)

Appellant : Ganga Spinning and Weaving Mills

Respondent : Collector of Central Excise

Judgement :

1. In this matter the Appellant who produces yarn falling under Tariff Item 18E was held to have cleared 10,015 kgs. of yarn between the period 6-11-1978 and 31-1-1979 without payment of excise duty (and not excess duty as mentioned in the order) at the rate of Rs. 24 per kg.

and other levies at appropriate rates. The Assistant Collector further held that Notification No. 332/77-CE exempts polypropylene spun yarn falling under Tariff Item 18E and does not provide exemption to Blended polypropylene yarn. He held that yarn spun from mixture of polypropylene with other fibre is not referred to in trade parlance as polypropylene yarn but as blended yarn. As Notification No. 332/77-CE is restricted, according to the Assistant Collector, only to yarn exclusively spun out of polypropylene, the exemption was held to be not applicable to the blended yarn. He, therefore, confirmed the demand proposed in the show cause notice. The Appellate Collector upheld the orders of the Assistant Collector and observed that the issue of a subsequent Notification No. 149/80-CE by which blended polypropylene yarn (with a content of not less than 50% polypropylene staple fibre) was exempted, gave strength to the finding of the Assistant Collector.

The Appellate Collector observed that "This shows that the earlier Notification 332/77 applied only to polypropylene yarn manufactured out of polypropylene staple fibre only. Had that not been the intention, there would have been no need to issue the subsequent notification." 2. Before us, Shri R.R. Gupta, Advocate, appearing for the appellant, with Shri N.C. Sogani, Consultant, framed three issues, as follows :- (i) That show-cause notice issued on 14-9-79 was barred by limitation was the period involved being November-December 1978 and January 1979, normal period for issuing show cause notice was only six months under rule 10; (ii) That Rule 10 of the Central Excise Rules, 1944 having been omitted by Notification No. 177-CE, dated 12-11-1980, with effect from 17-11-1980 had the effect of the notice issued on 14-9-1979 being infructuous; (iii) That yarn manufactured by the appellant was wholly exempted under Notification No. 332 of 1977 because irrespective of the composition, the manufactured item could not be termed anything but non-cellulose polypropylene spun yarn.

3. We have considered the submissions made by both sides. We have examined the classification lists filed by the Appellant and observe that these are verified by the Inspectors and Superintendent of Central Excise and were approved by the Assistant Collector of Central Excise.

From such a perusal we also notice that the composition of yarn was clearly mentioned in the classification lists furnished before them.

4. We have perused the show cause notice issued by the Superintendent of Central Excise on 14-9-1979 and the corrigendum issued on 2-12-1979.

In the show cause notice the Rule mentioned in support of the demand is 10(l)(a) suggesting that the proviso to the Rule by which the time-limit could be extended up to 5 years instead of the normal 6 months was invoked. However, there is no material at all in the show-cause notice and the corrigendum alleging any suppression of facts or mis-statement justifying the extension of the time-limit under the Rule to 5 years. We have already observed that the classification lists give full information and the Department has not established that there is any suppression of facts or mis-statement by the appellant.

Therefore, we agree with the submission of the Appellant that it is only the normal time limit that applies and not the extended time limit provided in the proviso to Rule 10 C.E. Rules.

5. In the circumstances, we hold that the demand was time-barred. As a result, the appeal is allowed on this ground. In view of this, we do not consider it necessary to examine issues (ii) and (iii).

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