

Cce Vs. Mordi Textiles and Processors

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-16-2004

Reported in : (2004)(115)LC569Tri(Delhi)

Judge : A T V.K., M Bohra

Appellant : Cce

Respondent : Mordi Textiles and Processors

Judgement :

1. The issue involved in this appeal, filed by the Revenue, is whether the duty of Excise is chargeable from M/s. Mordi Textiles & Processors Ltd. on dyed yarn.

2. We head Shri D.N. Chaudhary, learned SDR and Shri B.L. Narasimhan, learned Advocate for the Respondents, It transpired that the issue involved in the present appeal is squarely covered by the decision of the Tribunal in the case of M. Tex and D.K. Processors (P) Ltd. v. CCE, Jaipur 2001 (136) ELT 73 (Tribunal) which has been confirmed by the Supreme Court as the appeal filed by the Revenue has been dismissed as . The Appellants manufacture man-made processed fabrics and dyed yarn. They receive grey yarn from M/s.

Bhilwara Melba De Witte Ltd., for dying under Rule 57F(4) of the Central Excise Rules, 1944. They were clearing the dyed yarn without payment of duty to M/s. Bhilwara Ltd. who were using the same for manufacture of woven/knitted fabrics. The said fabric was again received by the Respondents for processing under Rule

57F(4). M/s.

Bhilwara Ltd. on receipt of the processed fabric used the same in the manufacture of laminated fabric and certain quantity was cleared by them as such for home consumption on payment of duty. The Department demanded the duty on the ground that dyed yarn used in relation to the manufactured of fabric was not eligible for exemption from payment of duty under Notification No. 214/86. The Commissioner (Appeals), however, under the impugned Order had set aside the demand following the decision of the Tribunal in the case of M. Tex & D.K. Processors (P) Ltd. (supra). The Revenue has contended that the decision in the case of M. Tex & D.K. Processors was based upon a particular Circular No. 306/22/97-CX dated 20.3.1997 which had been issued in a different context where the job workers should have been availing exemption under Notification. The Revenue has also relied upon the decision in the case of Facit Asia Ltd. v. CCE in the grounds of appeal.

We observe that the decision in the case of Facit Asia was duly considered in the case of M. Tex & D.K. Processors. The Tribunal has held that Rule 57F(4)(ii) by necessary implication means that duty liability on goods manufactured by a job worker out of inputs on which Modvat Credit had been taken and removed under "Rule 57F(4) has to be discharged by the Assessee and not the job worker, and if we do not accept this interpretation, we would be rendering the said Clause (ii) superfluous inasmuch as duty cannot be charged twice over on the same goods - once by the job worker and again by the assessee." Observation in Facit Asia, on which Adjudication Authority relies are no longer valid in view of the provisions of Clause (ii) of Rule 57F(4). When the revenue filed the appeal against the said decision the Supreme Court dismissed the appeals and passed the following Order: These appeals were adjourned on 30th April, 2002 to facilitate the learned Attorney General find out whether the facts of the appeals are covered by the Circular of the Central Board of Excise and Customs, New Delhi No. 306/22/97-CX, dated 20th March, 1997. Learned Attorney General after examining the same today has conceded that the Circular covers the facts of these cases against the Revenue.

Therefore, these appeals are dismissed.

In view of the dismissal of the appeals filed by the Revenue it cannot be claimed the the decision in the case of M. Tex & D.K. Processors (P) Ltd. is not applicable to the facts of the presnt matter. We, therefore, reject the appeal filed by the Revenue.

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