**Nirman Texturising Industries Vs. Commissioner of Central Excise**

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**SooperKanoon Citation** : sooperkanoon.com/35133

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

**Decided On :** Apr-30-2004

**Judge** : S T S.S., T Anjaneyulu

**Appellant** : Nirman Texturising Industries

**Respondent** : Commissioner of Central Excise

**Judgement** :
1. Appellants are Texturisers of man made filament yarns. Exemption on Texturising by virtue of Notification No. 178/83 was withdrawn by the Budget proposals in the year 1994-95 & duty on crimped & Texturised yarn with effect from on 28.2.94 was required to be paid without the benefit of Modvat Credit under Rules 57A. They were availing Proforma credit under Rule 56A of the duty paid on yarn crimped and texturised, by them.

2. By amendment to Notification No. 1/93 dated 28.3.93 by Notification No. 90/94 dated 25.4.94 they became entitled to exemption under S.S.I.Scheme. They filed a classification list on 12.5.94 & started availing the S.S.I benefit rate of duty under these notifications (i.e normal rate 10% on the first fifty lakh clearance).

3. Facility of Performa Credit under Rule 56A was withdrawn on 20.5.1994 & eligibility of Modvat Credit was extended & granted to them by Notification Nos. 23/94 & 24/94 dated 20.5.94. They filled a declaration on 27.5.94 under Modvat Rules & started availing the benefit of duty paid on filament yarn.

4. Concession of duty of Rs. 20,861 was availed during the period 12.5.04 to 19.5.94 as above. That was denied by the AC on the grounds the concessional rate of duty availed under Notification No 1/93 read with Notification No. 9/01/94 is available to only units working under Modvat Credit under the Rules & not to Proforma Credit units working under Rule 56A "In the appellants case their goods were specified under notification No. 1/98 for the first time on 25.4.94, hence the first clearances value has to be computed from 25.4.94, only as rightly held by the Assistant Commissioner, but he did not give effect to the same while confirming the demands. Therefore, while holding the impugned order proper in principle. In direct the Assistant Commissioner re-determine the amount of demand above terms and inform the appellant accordingly. The Appellants as listed in Annexure 'A ' enclosed herewith are required to pay the amount so determined.

(a) The order of the Assistant Commissioner was exparte & the decision arrived at by the Commissioner (Appeals) also has missed the point to be determined in this appeal. The order of the AC is stereo typed & the CCE(A)'s on a bunch matter. The CCE (A)'s order traverse beyond the issues raised. The orders are therefore required to be set side & matter remitted to the Assistant Commissioner to re hear the appellant & pass an order on merits thereafter. Appeal is consequently allowed as Remand.