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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-18-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Ankur Textiles

Respondent : Commissioner of Central Excise

Judgement :
a) The issue involved in the present appeal is whether the yarn admittedly doubled before being used captivity for manufacture of fabrics, would be liable to pay duty, since notification 35/95 amending by notification 84/95 dated 18.5.95 added a proviso that the exemption availed under S.No. 1 of notification 35/99 was not available since the notification should not apply to clearance of yarn from a factory having facilities (Involving place & equipment) for producing single yarn. Which the appellant had demands. Notice were confirmed. The plea of admissibility of benefit of not 121/94-CE dated 11.8.94 sought by the assessee was rejected by CCE (Appeals) on the following findings- "... ....I find that this is a new contention raised by the appellants which cannot be allowed to be raised at this stage.

Moreover, had the appellant claimed the benefits of these notification along with notification 35/95, perhaps the legal portion would have been disposed.

b) The notices of demand for the periods have been issued as follows SCN date Period of clearance1.12.95 18.5.95 to 30.9.9528.3.96 1.10.95 to 29.2.962.9.96 1.3.96 to 30.6.96 The amendment came on 18.5.95. No classification list was required to be filed & or approved after 18.5.1995. These new rule dispensed with the annual ritual of filing classification lists, its approval by the proper officer and other incidental drill. Therefore, after 18.5.95 there was no requirement to claim & get approval from the proper officer the benefit of any particular notification. The claim for an alternative notification would arise, for the first time when proposals denying the benefit of an exemption, of duty and availed as per the assessments, made by the assessee under the provision of Rule 173 F as amended & applicable, is questioned. This assessments so made could be impugned under Rule 173 I (3) by another order of assessment to be made by the proper officer. That rearmament opportunity and hearing for the same, has not been granted to the assessee herein. The assessee has been directly issued a notice of short levy of duty demand under Section 11A. The proper officer was required to pass an order of assessment, under Rule 173 I (3). The officer was bound by law to consider at such assessments the exemptions from duty if available, under any other notification when he found that benefit of notification 35/95 as assessed by the assessee was not eligible for any reason. This onus of assessment and application of the benefit of an alternate notification cast on the proper officer cannot be shifted, denied, merely on the grounds as arrived at by the CCE(Appeals). The proceedings before CCE (A) were in continuation of the proceedings under powers of Rule 173 I (3) read with Section II A (1). Therefore the claim made before him was required to be considered.

c) There is force in the submission of the Ld. Advocate that the eligibility to a notification is a point of law and can be taken at any stage, relying upon Hindustan Platinum Pvt. Ltd 1991 (53) ELT 437. The CCE(Appeals) refused to entertain the plea was not justified.

d) In view of the findings, the eligibility to notification 12/94 has to be reexamined in the facts of the case. The matter is therefore required to be sent for Denova adjudication to the original authority to re-determine the eligibility under not 20/95 as claimed by the appellant.