

Spbl Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-30-2004

Reported in : (2005)(99)ECC555

Judge : S Kang, a T V.K.

Appellant : Spbl Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The issue involved in this appeal filed by M/s. SPBL Ltd, is whether the man-made fabrics in stock as on 1-3-2001 with them was processed or not.
2. Shri K.K. Anand, learned Advocate, submitted that the appellants process man-made fabrics which attract levy of Central Excise duty under Section 3A of the Central Excise Act up to 28-2-2001; that with effect from 1-3-2001 the duty became leviable under provisions of Section 3 of the Central Excise Act on ad valorem basis; that the Revenue has demanded Central Excise duty and imposed penalty in respect of stock of 84,407.50 mts. with them as on 1-3-2001 treating them as unfinished fabrics. The learned Advocate, further submitted that the duty under Section 3A of the Central Excise Act is with reference to the factory and not with reference to the stage at which the goods attained finality after passing through the activity carried on by the factory; that further Notification No. 19/2000-Central Excise, dated 1-3-2000 specifies the rate of duty in respect of processed textile fabrics manufactured or produced by an independent processor with the aid

of hot air stenter; that the rate of duty prescribed in the notification is a compounded duty per chamber per stenter but while specifying the same, reference has been made to the measurement of 'processed fabrics' produced in the unit from such chamber/stenter; that therefore, it is obvious that the expression 'processed fabrics' means fabrics which have undergone the hot air stenter process; that the other processes carried out by them subsequently are not relevant for the purpose of levying the duty under Section 3A of the Central Excise Act; that the impugned quantity of goods had undergone through the process of hot air stenter before 1-3-2000 and as such it should be deemed to have discharged the duty liability and no further duty on clearance on or after 1-3-2000 is payable by them. He also contended that the question whether the goods have reached the final manufacturing stage or not is relevant only for the purpose of determining the duty liability under Section 3A of the Central Excise Act; that the basis of taxation under Section 3A of the Central Excise Act are on entirely different basis; that under Section 3A of the Act whether the goods have been manufactured or not, they are liable to duty if they have been specified under the said section and if they have undergone the process mentioned in the notification. Learned Advocate also relied upon the Trade Notice No. 18/2001, dated 5-3-2001 issued by Commissioner, Vadodara [as reported in 2001 (129) E.L.T. T10] wherein it has been clarified that in respect of processed textile fabrics manufactured prior to 1-3-2001, since duty liability would have been discharged by 28-2-2001, on compounded levy basis, there is no further duty liability even if such fabrics are cleared on or after 1-3-2001 provided the duty liability has been discharged by 28-2-2001.

Learned Advocate contended that as the impugned fabrics had been processed by them before 1-3-2001 and the duty had been discharged by them during the month of February, 2001, and as the ad valorem duty came into effect on 1-3-2000 only, the same cannot be applied to the goods manufactured prior to that date.

3. Countering the arguments Shri O.P. Arora, Id. SDR submitted that the impugned fabrics was not fully manufactured as admittedly the process of decatizing and folding were still to be carried out by the appellants on the said fabrics; that as per Fair Child's Dictionary of Textile, decatizing "is a method of

sponging wool and worsted to set the width and length and to improve the luster, hand and finish"; that thus it is apparent that the fabrics cannot be said to be ready for marketing without the process of decatizing; that duty under compounded levy scheme would be deemed to have been paid only when the fabrics were processed completely; that as the fabrics were still to undergo some processes, it cannot be deemed to have suffered the duty on or before 28th February, 2001; that the Trade Notice No. 18/2001 of the Vadodara Commissionerate relied upon by the learned Advocate also refers to the processed fabrics and not to incomplete fabrics. He relied upon the decision in the case of *Pratibha Silk Mills v. CCE, Vadodara* [1989 (39) E.L.T. 118 (Tri.)] wherein it has been held by the Tribunal that accounting of production of processed fabrics is made only after folding and measurement. Reliance has also been placed on the decision of *Bhagat Ram Agarwal v. CCE, Hyderabad 4*. In reply the learned Advocate mentioned that the dispute in the present appeal does not relate to the RG 1 stage, that is, stage at which the processed fabrics are to be entered in RG 1 register; that the issue involved in the present appeal is whether fabrics have been processed or not; that all the processes have been undertaken by them and therefore the fabrics in question were processed and as such no duty is payable by them.

5. We have considered the submissions of both the sides. Processed Textile fabrics falling under specific headings of the Schedule to the Central Excise Tariff Act were notified under Section 3A of the Central Excise Act whereby the duty on the specified processed textile fabrics was leviable on the basis of annual capacity of production as determined by the competent authority. The amount of duty was required to be paid by the fifth of each calendar month. It is the contention of the appellants that they had processed the fabrics in the month of February, 2001 and had discharged the duty liability under Section 3A of the Central Excise Act read with Rule 96ZQ of the Central Excise Rules, 1944 and, therefore, the duty on the removal of these processed fabrics in the month of March, 2001 or thereafter could not attract again the excise duty as these are already duty paid. The Revenue, on the other hand, claimed that the fabrics in question were not processed completely as the process of decatizing and folding, which are necessary processes, had not been undertaken by the appellants and these processes were complete only after withdrawal of compounded levy scheme in

respect of processed textile fabrics. It has not been disputed by the appellants that these two processes, namely, decatizing and folding had not been undertaken by them. They have, however, submitted that as the compounded levy scheme was applicable in respect of fabrics manufactured with the aid of hot air stenter, the duty deemed to have been paid on the impugned goods as the process with the aid of hot air stenter had been undertaken by them in respect of textile fabrics in February, 2001 itself. We do not find any force in these submissions of the appellants. The Compounded levy scheme was applicable to the independent processors which were manufacturing textile fabrics with the aid of hot air stenter. If any independent textile processor was not manufacturing the textile fabrics with the aid of hot air stenter; he was outside the purview of compounded levy scheme. It does not mean that the duty was leviable immediately after the textile fabrics has undergone the process with the aid of hot air stenter. The duty is imposed on the processed textile fabrics. Unless and until all the fabrics is ready after carrying out all the required processes, it cannot be regarded as processed textile fabrics. As admittedly the process of decatizing and folding have not been undertaken on the fabrics in question by 28-2-2001, the said fabrics cannot be said to have suffered the duty under Section 3A of the Central Excise Act. We, therefore, uphold the demand of duty as confirmed in the impugned order. As far as imposition of penalty on the appellants is concerned, we are of the view that the issue involved is being one of the interpretation, no penalty is imposable. Accordingly, we set aside the penalty imposed on the appellants. The appeal is thus partially allowed.

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