

Rajanarayan and Co. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-26-1987

Reported in : (1987)(12)LC984Tri(Delhi)

Judge : G Sankaran, S Vice-, V Raghvachari

Appellant : Rajanarayan and Co.

Respondent : Collector of Central Excise

Judgement :

1. Show cause notice dated 18.4.1980 had been issued to the appellants M/s. Rajanarayan & Co. to show cause why duty short paid by them in respect of the cellulosic spun yarn manufactured and removed by them during the period 28.1.1980 to 12.2.1980 should not be recovered from them. This was on the basis that on test of the sample of the yarn drawn on 28.1.1980 at it was found that as against the 31 count declared by the appellants the count was 60.2. It was pointed out that therefore duty paid at the lower rate was not proper. On subsequent sample being drawn on 12.2.1980 the count of the yarn was found to be 31 and it was for that reason that the demand for short levied duty was confined to the period 28.1.1980 to 12.2.1980. The appellants replied that their manufacture has always been of yarn of count 30 and never of yarn of count 60 and therefore the demand was incorrect. The Assistant Collector rejected the said defence and confirmed the demand. This was upheld by the Appellate Collector. The revision petition preferred by the appellants to the Central Government on receipt on transfer, is the present deemed appeal.

2. Under letter dated 17.4.1987 the appellants have intimated that they will not be appearing in person or through any representative. None has appeared for the appellants during the hearing. We have perused the records and heard Shri Vineet Kumar for the Department.

3. It is clear from the show cause notice, and it is not disputed for the appellants, that the sample drawn on 28.1.1980 was tested and the count was found to be 61 and that on demand from the appellants a retest was done which also confirmed the count to be 61. It transpires from the orders of the Assistant Collector that the appellants were given an opportunity to have a further test done by a laboratory of their choice with reference to the sample with them but that the appellants wanted to impose a condition about acceptance by the Assistant Collector and that as the Assistant Collector was not willing to accept such a condition the appellants did not choose to have a further test done. In the circumstances both the lower authorities acted correctly in accepting the finding of the official test that the count of the cellulosic yarn was 61.

4. The case for the appellants is that if they had really manufactured yarn of count 60 and above, they would have, in the normal circumstances, disposed of the same at its proper sale price which would be higher than the price of yarn of count 30 and that in connection with such a sale the appellants would have been entitled to collect from the purchaser the appropriate excise duty also. It is contended that the very fact that they disposed of the yarn at a lesser price and collected excise duty from the purchaser also on the lesser rate only would establish that the count of the yarn would not have been 60. They have cited a decision of the Madras High Court in the case of Coimbatore Pioneer Mills Ltd. wherein such an argument is said to have been accepted. In the present case we have seen that the count of the yarn at 60 was confirmed by a retest also and that though the appellants had an opportunity to retest the same by a further test of a sample with them they did not choose to avail themselves of that opportunity. In the circumstances we hold that no presumption as requested by the appellants can be drawn.

5. In view of the above it follows that the appellants were bound to pay the differential duty in respect of such manufacture and removal by them of yarn of

count 60. The department has quantified this in respect of the entire production between 28.1.1980 and 12.2.1980. This was on the basis that the count of the yarn of the sample drawn on 12.2.1980 was found to be 30 on test and therefore the yarn manufactured and cleared on and from 12.2.1980 would not be liable for differential duty but the yarn manufactured upto 12.2.1980 would be liable for such differential duty.

6. We have looked into the question whether this would be proper. We find that the issue is squarely covered by the decision of the Madras High Court in the case of Ramalinga Choodambikai Mills Ltd. v. Govt. of India . There sample had been drawn on 14.9.1966, test of which revealed the sample to be of denierage higher than 34 NF but less than 40 NF. The next sample was drawn on 20.10.1966, the result disclosing count was less than 34 NF. The High Court held, rejecting the contention of the Mills that the test report of the sample drawn on 14.9.1966 could be applied only to yarn manufactured on 14.9.1966, that the said result could be applied for all yarn manufactured between 14.9.1966 and 20.10.1966. In coming to the said conclusion the High Court relied on an earlier decision of the same High Court in the case of Shree Sakti Textile (P) Ltd. The High Court observed in paragraph 7 as follows: If the petitioner's contention is accepted that the sample drawn on particular day can be taken to represent a count of yarn produced only on that day, it becomes necessary for the department to take the sample every day or even every hour to be more accurate. Such a procedure is quite impossible to be followed and it will also lead to unnecessary waste of time. If the petitioner in a particular case shows that after the taking of the sample the machinery has been attended to and the yarn produced is of a different count than the one produced on the day when the sample was taken the officers cannot base the test results on the sample for the entire goods manufactured during the period till the next sample is taken.

7. We therefore hold that the demand as raised by the department, for the entire production between 28.1.1980 to 12.2.1980 is proper.

8. The orders of the lower authorities are accordingly confirmed and this appeal is dismissed.

