SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Nahar Fibres Vs. Cce

Nahar Fibres Vs. Cce

SooperKanoon Citation : sooperkanoon.com/36612

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-27-2004

Reported in : (2004)(117)LC581Tri(Delhi)

Judge : M T K.C.

Appellant : Nahar Fibres

Respondent : Cce

Judgement :

1. This issue involved in this case is whether the AED under Additional duties of Excise (Textile & Textile Articles) Act 1978 @ 15% of BED is Chargeable when the EOU clears the goods in DTA. The original authority confirmed a demand of Rs. 1,25,466/- and imposed an equal amount of penalty on the appellants on the ground that from 1.3.2000 onwards, the appellants had cleared cotton yarn in DTA and paid only the basic duty and not the additional excise duty under Additional Duties of Excise (Textile & Textile Articles) Act 1978. The Commissioner (Appeals) also confirmed the order of the original authority based on the Board's Circular No. 554/50/2000-CX dated 19.10.2000 for interpretation of Notification No. 8/97-CX dated 1.3.1997. However, the penalty imposed by the adjudicating authority was set aside by him. The appellants challenged the Circular of the Board No. 554/50/2000-CX dated 19.10.2000 before the Supreme Court and the Supreme Court in its order in the case of Nahar Industrial Enterprises Ltd. v. Union of India quashed the Board's Circular dated 19.10.2000 and held as under: 10. A perusal of the un-amended Notification No. 8/97-CE and notification after amendment vide

Notification No. 11/2000-CE shows that only the following words were inserted by way of amendment: (i) introduction of the words "the aggregate of after words "equal to" in the original notification.

(ii) Introduction of the following words after "Section 3 of the Central Excise Act" in the original notification i.e. "or under any other law for the time being in force".

11. That does not in any way create a liability on the 100% EOUs to pay AED. Notification No. 55/91-CE, dated 25.7.1991 is in no way diluted so far as the manufacturers like the appellants are concerned, notwithstanding what has been provided in Notification No. S/97-CE dated 1.3.1997 as amended by Notification No. 11/2000-CE, dated 1.3.2000. As stated above, the only change is that under Notification No. 8/97-CE dated 1.3.1997 the 100% EOUs were exempt from paying duty in excess of amount of BED paid by the producer or manufacturer who is not 100% EOU, whilst after amendment by Notification No. 11/2000-CE dated 1.3.2000 the 100% EOU is exempt from paying duty in excess of amount of BED plus the amount of AED plus any other duties of excise under any other law for the time being in force, paid by the producer or manufacturer who is not 100% EOU. Thus, the view expressed in the Circular dated 19.12.2000 and view of the High Court are indefensible. The Circular afore-noted is, therefore, quashed.

2. It was, therefore, pleaded by the appellants that the appeal may be allowed.

3. Shri P.M. Rao, SDR appearing for the Revenue conceded the position that AED (T&TA) is not chargeable on the clearance of the cotton yarn during the relevant period.

5. As the Revenue has conceded that additional excise duty under Additional Duties of Excise (Textile & Textile Articles) Act is not chargeable on the clearances of cotton yarn in domestic territory by the appellants during the relevant period in view of the Supreme Court's decision in case of Nahar Industrial Enterprises Ltd. v. Union of India (supra), the order of the lower authority is set aside and the appeal is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com