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Commissioner of Central Excise Vs. G.P.L. Polyfils Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-10-2005

Reported in : (2005)(183)ELT27TriDel

Judge : P Bajaj, M T K.C.

Appellant : Commissioner of Central Excise

Respondent : G.P.L. Polyfils Ltd.

Judgement :

1. This order will dispose of the above captioned appeal of the Revenue and the cross-objection preferred by the assessee against the common impugned order.

2. The Revenue has contested the validity of the impugned order of the Commissioner (Appeals) dropping the duty demand against the assessee after setting aside the order in original by holding that the product polyester staple fibre manufactured by the assessee, was not classifiable under Chapter 55 of the Tariff in view of Chapter Note 1 of Chapter 54 of the Tariff. The cross-objection had been preferred by the assessee on the ground that even no duty demand could be raised and confirmed by the adjudicating authority for want of service of proper show cause notice under Section 11A of the Act on the assessee.

4. Chapter 54 of the Tariff, relates to man-made Filaments and its Chapter note I defines man-made fibres, as under :- "Throughout the First Schedule, the term man-made fibres" means staple fibres and filaments of organic polymers produced

by manufacturing processes, either : (a) By polymerization of organic monomers, such as polyamides, polyesters, polyurethanes or polyvinyl derivatives; or (b) By chemical transformation of natural organic polymers (for example', cellulose, casein, proteins or algae), such as viscose rayon, cellulose acetate, cupro or alginates." It remains undisputed that none of these processes, had been undertaken by the assessee in respect of their fibre so as to bring the same within the ambit of this Chapter 54 or even Chapter 55 which are part of the First Schedule. The learned Commissioner (Appeals) has, in our view, rightly dropped the duty demand against the assessees on this ground.

5. The learned SDR has however, contended that the definition given in Chapter Note 1 to Chapter 54, should not be taken as exhaustive but only explanatory and that the fibre manufactured by the assessee, falls within the definition of "goods" and as, such is excisable and liable to duty. But we are unable to subscribe to the contention of the learned SDR. The Chapter Note 1, reproduced above, sets out the definition of man-made fibres for the purpose of bringing the same within the ambit of the First Schedule of the CETA. It gives an exhaustive and self-contained/self-defined, definition of the man-made fibres. Nothing can be subtracted or added to this definition and for bringing the "man-made fibres" within the scope of the First Schedule of the CETA, the processes detailed in this Chapter note, must be undertaken by an assessee. Therefore, even if it is taken for sake of arguments that the fibres manufactured by the assessees in the case in hand falls within the definition of 'goods' but being not covered under the First Schedule as observed above, they cannot be saddled with the duty liability. The view taken by the learned Commissioner (Appeals) after having regard to the Chapter Note 1 of Chapter 54, for excluding the fibres manufactured by the assessees from Chapters 54/55 of the Tariff, in our view, is perfectly valid and no fault can be found with it. Therefore, the impugned order passed by him is upheld.6. The cross-objections have been preferred by the assessees on the ground that since no show cause notice under Section 11A had been issued to them, no duty demand could be confirmed by the adjudicating authority. We have gone through the show cause notice and its perusal shows that all that proposed therein, was as to why their declaration dated 26-8-2000, should not be modified and appropriate duty at the rate of 16% should not be charged. No duty amount

had been quantified therein. Therefore, this show cause notice could not be said to be under Section 11A of the Act.

7. In view of the discussion made above, the impugned order of the Commissioner (Appeals) is upheld. The appeal of the Revenue is dismissed. The cross-objections of the assessees are disposed of accordingly.

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