

Century Denim Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-02-2005

Reported in : (2005)(191)ELT330TriDel

Judge : S King, V President

Appellant : Century Denim

Respondent : Cce

Judgement :

2. Applicants filed this application for waiver of pre-deposit of duty of Rs. 13.01 Crores. The brief facts of the case are that applicants are engaged in the manufacture of Cotton fabrics and is of 100% Export Oriented Unit (EOU). The applicants were claiming the benefit of Notification 8/97-CE dated 1.3.1997 which exempts finished products, rejects and waste and scrap which is produced or manufactured of 100% EOU wholly from the raw-material produced or manufactured in India and allowed to be sold in India. Applicants are using Indigo Pure for coloring the Cotton yarn and fabrics sold in DTA. Indigo Pure was not being procured indigenously by the applicants but were being imported.

The benefit of notification was denied; on the ground that as imported Indigo Pure Dye is being used by the applicants, therefore, they are not entitled for the benefit of notification No. 8/97-CE dated 1.3.1997.

3. In earlier proceedings, the Tribunal in their own case as well in the case of Maral Overseas Limited v. Commissioner of Central Excise, Indore entitled for the benefit of Notification No. 8/97-CE dated 1.3.1997 as imported Indigo Pure dye is being used as raw-material in the manufacture of the goods cleared in DTA. M/s. Maral Overseas Ltd. filed appeal to the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the appeal vide order dated 20.7.2001. The present applicants also approached Hon'ble Madhya Pradesh High Court against the decision of the Tribunal and Hon'ble Madhya Pradesh High Court vide order dated 22.11.2002 dismissed the Petition. In the impugned order the benefit of notification is denied and the demand is confirmed for subsequent period.

4. The contention of the applicants is that at the time of hearing of the appeal the applicants are directed to deposit an amount of Rs. 6.5 Crores by the Commissioner (Appeals). The appellants approached Hon'ble High Court against the interim order passed by the Commissioner (Appeals) and Hon'ble Madhya Pradesh High Court vide order dated 25.6.2003 reduced the amount to Rs. 3.25 Crores and applicants were directed to maintain stock of material of Rs. 3.25 Crores. The applicants complied with the direction given by the Hon'ble High Court and amount of Rs. 3.25 Crores is deposited with the Revenue, which is till lying with the Revenue. The contention of the applicants is also that the decision of the Hon'ble Supreme Court where by the appeal filed by M/s Maral Overseas Ltd. has no impact on the case of the applicants as in the case of M/s. Maral Overseas Ltd. the issue was not in respect of the imported Indigo pure dye. The contention is that applicants approached the Hon'ble Madhya Pradesh High Court where their Petition was dismissed and their appeal before the Division Bench is still pending. Therefore, the issued involved in the present appeal has not attained finality. The contention of the applicants is also that as per the provisions of Notification No. 8/97-CE dated 1.3.1997, the goods manufactured by 100% EOU wholly from the raw material produced and manufactured in India and allowed to be sold in DTA. Their contention is that their Cotton yarn is their main material, which was manufactured in India. Only dye, which is not raw material, is being imported. Therefore, they are entitled for the benefit of this notification.

5. The applicants also pleaded financial hardship on the ground that the deposit of this amount will cause undue financial hardship to the applicants.

6. The contention of the Revenue is that the issue in respect of the benefit of Notification No. 8/97-CE dated 1.3.1997 is now settled in favour of the Revenue in applicants' own case. Therefore, there is not merit in the contention of the appellants. The Revenue also produced the copy of the Annual Report for the year 2003-2004 of the applicants' Firm to show that they were having gross profit of Rs. 229 Crores as on 31.3.2004.

7. The issue involved in this case is whether the applicants are entitled for the benefit of Notification No. 8/97-CE dated 1.3.1997.

The admitted facts are that applicants are importing dye and using the same in the manufacture of the goods cleared from DTA. This issue came up before the Tribunal in applicants' own case CCE, Indore v. Century Denim and the Tribunal of the arguments now raised before us held that the applicants are not entitled for the benefit of the notification. The applicants approached Hon'ble Madhya Pradesh High Court and the Hon'ble High Court dismissed their Petition against the decision of the Tribunal vide order dated 22.11.2002 para-15 and 16 of the said order is reproduced below: The Tribunal has also considered the matter on the same lines and has held that the use of 'Indigo Pure' dye is a raw material in the manufacture of Denim fabric. The question which can be considered whether the use of small quantity of imported dye in bringing the end product into existence even in that case whether it can be treated that the finished product has come into existence wholly from cotton. I think it cannot. For the production of Denim fabric basic raw material may be cotton, but if an imported dye is used, in that case dye has also to be treated as raw material and the finished product cannot be treated as wholly produced or manufactured wholly from cotton. Thus, in the light of the aforesaid discussion and also in view of the dictum of the Supreme Court in the case of M/s. Ballarpur Industries Ltd. (supra) the word "wholly from...." Used in the Notification qualifies for raw material, if some quantity of imported dye is used or consumed in bringing the end product/finished product into existence without which Denim fabric cannot be produced then it cannot be argued that the finished

product is wholly from or only from basic raw material that is cotton, but it has to be treated that the dye is also a raw material, which is admittedly imported. Thus, the production of Denim fabric cannot be said to be wholly from raw material produced or manufactured in India.

Consequently, I do not find any scope for interference in the impugned order passed by the Tribunal, as no case is made out on merits. Accordingly, this petition is dismissed with no order as to costs.

8. We also find that M/s. Moral Overseas Ltd. filed Civil Appeal in the Hon'ble Supreme Court against the decision of the Tribunal and the Hon'ble Supreme Court vide order dated 20.7.2001 dismissed the appeal.

In respect of the financial hardship, we find that the Annual Report and account for the year 2003-2004 produced by the Revenue shows a gross profit of Rs. 229 Crores and also income from sales as Rs. 2582 Crores. Assistant Collector of Central Excise, West Bengal v. Dunlop India Ltd. and Ors.

held that we considered that where matters of public revenue are concerned, it is of utmost importance to realize that interim orders ought not to be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the interest. In the present case as the issue involved is already settled by the Tribunal against which the civil appeal is dismissed by the Hon'ble Supreme Court and in the case of applicants, the Hon'ble Madhya Pradesh High Court upheld the decision of the Tribunal. In these circumstances we find no ground to waive the pre-deposit of duty. We also note that applicants have already deposited an amount of Rs. 3.25 Crores in pursuance to the order passed by the Hon'ble Madhya Pradesh High Court. The applicants are directed to deposit the remaining amount of duty within a period of 10 weeks and report, compliance on 24.5.2005/-.

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