

Commissioner of Central Excise Vs. Raymond

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-17-2005

Reported in : (2005)(192)ELT868Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Raymond

Judgement :

1. After hearing both sides in this appeal filed by revenue, this order is being passed. The respondents are a composite Mill. They manufacture woollen yarn, polyester yarn, wool tops, polyester tops etc and consume the same captively, without payment of Basic/Additional duty (T&TA) on the yarn and tops manufactured. The goods are captively consumed without filing C.L/Declaration for the same, as required under Rule 173 B of Central Excise Rules, 1944, with deliberate intention to evade payment of duty and willfull suppression of the facts is alleged to fraudulently avail the exemption under Notification No. 67/95 by the Show Cause Notice issued to Commissioner vide his order discharged the notice on the grounds a. Section 3(1) of additional duty of excise (T&TA) Act, 1978 fixes the measure of levy and says that this will be equal to 15% of total amount chargeable as excise duty under Central Excise Act, 1944 read with any notification issued in relation to the duty so chargeable.

While calculating the effective excise duty existing notifications are taken into consideration except two types of notification viz., (i) An exemption notification which fixes an effective rate on the grounds that Modvat credit has been taken in respect of raw materials used; and (ii) An exemption notification which reduces the duty on the final product by an amount equal to the duty paid on raw materials (i.e. a set-off notification) b. The goods in question were exempted under Notification No. 67/95 and Notification 22/96 from whole of the duty of Excise leviable under authority of Section 3 of Central Excise Act, 1944. These notifications have not been covered under above 2 exceptions. Therefore, they have to be applied to determine excise duty chargeable and therefore in the case of goods in question the excise duty chargeable will become nil. As the measure of additional duty leviable under Additional Duties of Excise (Textile & Textiles Articles) Act, 1978 is 15% of an effective excise duty chargeable, this additional duty will also become Nil.

c. Also, in terms of Sub-section 3 of Section 3 of Addl. Duties of Excise (T&TA) Act, 1978, it is provided that the provisions of Central Excise Act, 1944 and rules made thereunder including those relating to refunds and exemptions from duties will also apply so far as this is related to levy and collection of duty leviable under the section in respect of any goods. From above, it follows that if basic excise duty is exempted then addl. Duty will also be Nil.

d. Notifications issued under Section 5A of the Central Excise Act can exempt duties leviable under schedule of Central Excise Act only and no other Act.

Revenue was satisfied with this order and found the same to be not correct on the following grounds a. The Hon'ble Supreme Court in the case of Modi Rubber Ltd., [1986(25) ELT 849] held that an exemption notification issued under Rule 8(1) of the Central Excise Rules, 1944 (Now Section 5-A) does not mean an exemption from Special Excise duty and Additional excise duty unless such exemption notification also refers to the statutory provisions relating to special excise duty and additional duty.

b. The Commissioner in para 1 of his impugned Order-in-Original as referred to above Hon'ble Supreme Court's decision. However, the Commissioner in his findings is silent on the said judgment.

c. The Hon'ble Tribunal in the case of L.D. Textile Ind. Ltd v. Collector 1996(88) ELT-44 held that special Excise duty and Additional Excise duty imposed under separate enactments the exemption with regard to basic excise duty will not apply automatically to these levies. The Hon'ble Tribunal also relied upon Hon'ble Supreme Court's decision in the case of M/s. Modi Rubber Ltd. (para 6).

d. In this connection, the Hon'ble Tribunal decision in the case of M/s Vijay Resin Traders v. Collector of Customs [1994(72)ELT-54] is also relevant wherein it is held that the special excise duty and additional duty imposed under separate enactment, the exemption with regard to basic excise duty will not apply automatically.

Section 3 (1) of the Additional Duty of Excise(Textiles and Textile Articles) Act, 1978 dealing with levy and collection of additional duties of excise on certain textiles and textiles articles, read as:- "When goods of the description mentioned in the schedule chargeable with duty of excise under Central Excise Act, 1944 read with any notification for the time being in force issued by Central Government in relation to the duty so chargeable (not being a notification providing for any exemption for giving credit with respect to, or reduction of duty of excise under the said Act or the additional duty under Section 3 of the Customs Tariff Act, 1975 already paid on raw materials used in the production or manufacture of such goods) are assessed to duty, there shall be levied and collected a duty on excise equal to fifteen percent of the total amount so chargeable on such goods." This section fixes the measure of this levy and says that this will be equal to 15% of the total amount chargeable as excise duty under Central Excise Act, 1944 read with any notification issued in relation to the duty so chargeable. In other words this levy will be 15% of the effective excise duty under Central Excise Act, 1944. It would therefore result, that there is no scope of any ambiguity about the levy the Additional Duties of Excise (TTA) in the facts of this case.

The goods were exempt under Notification 67/95 dated 16.3.95 and Notification 22/96 dated 23.7.96 from whole of duty of excise leviable there on which is specified in the schedule to the Central Excise Tariff Act, 1985. As the measures of additional duty leviable under Additional Duties of Excise (Textile & Textiles

Articles) Act, 1978 is 15% of an effective excise duty chargeable, this additional duty will also become 'nil'. There is no mistake or impropriety found in the Commissioner's order impugned.

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