

Shree Dyeing and Bleaching Works Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-13-1987

Reported in : (1989)(40)ELT102TriDel

Appellant : Shree Dyeing and Bleaching Works

Respondent : C.C.E.

Judgement :

1. The factory of the appellants M/s. Shree Dyeing & Bleaching Works was visited by the Central Excise Officers on 19.1.1980. 4058.10 metres of man-made and cotton fabrics of different varieties were seized on the ground that they had been processed but no licence had been obtained therefor. Show cause notice dated 20.6.1980 was issued with reference to the said goods, calling upon the appellants to show cause why the same should not be confiscated and why penalty should not be imposed. After some further investigations another notice dated 27.6.1981 was issued under which the appellants were directed to show cause why duty amounting to Rs. 1,27,412.40 should not be demanded in respect of manufacture and removals during the period 15.6.1979 to 30.11.1979 and why duty at an appropriate rate should not be demanded for the period 8.6.1978 to 7.6.1979 (for which period no records were produced by the appellants). The appellants replied denying the charges. On adjudication, the Collector of Central Excise, Meerut under order dated 20.1.1982 confirmed the demand for duty for the period 15.6.1979 to 30.11.1979 and ordered confiscation of the seized goods, and accorded option to redeem on payment of fine of Rs. 10,000/-. He further imposed

a penalty of Rs. 50,000/-. On appeal therefrom, the Central Board of Excise and Customs, under its order dated 3.10.1982, reduced the penalty to Rs. 5,000/- and the redemption fine to Rs. 1,000/-. It further directed that, in quantifying the duty, the quantum of man-made fabrics processed by the appellants should be excluded.

This appeal is against the said order.

2. We have heard Shri R.K. Jain, Consultant for the appellants and Shri K. C. Sachar for the Department.

3. The charge against the appellants is that they were processing cotton fabrics, and thus manufacturing the same, without payment of duty and that they had not taken out any licence for carrying on the said manufacturing activity. It is not disputed by the appellants that they had not taken out a licence. Their contention has been that the process of dyeing did not amount to manufacture and, therefore, no licence was required to be taken out and no duty was payable. Shri Jain submitted that it is only by virtue of the validating ordinance of 24.11.1979 that the process of dyeing was declared, with retrospective effect, to be a process of manufacture and, hence, at any rate for the period earlier thereto there can be no charge of suppression and no penalty could be imposed with reference to the activity of dyeing carried on before that date. But we may note that the Supreme Court in the Empire Dyeing case, held, on a consideration of first principles, that the process of dyeing was a process of manufacture even before the Amending Act and that the amendment only made clear what was the true legal position.

4. Shri Jain further contended that the demand for duty was, in any event, barred by time. The lower authorities have rejected this contention on the basis that since the appellants had not taken out a licence, they were guilty of suppression and hence the larger period of limitation under Section 11-A of the Central Excises and Salt Act was available. It should be noted that neither in the notice dated 20.6.1980 nor in the notice dated 27.6.1981 was any specific charge made of suppression etc., as would invite the invocation of the larger period of limitation. In any event, it may be seen that on 21.6.1979 the appellants had filed a declaration to the Assistant Collector declaring the nature of their activity and seeking

exemption under Notification No. 111/78 from the requirement of taking out a licence under Rule 174. While this declaration may indicate that the appellants themselves were even then aware that the processing activity carried on by them amounted to a manufacturing activity, resulting in liability for payment of duty, the filing of the declaration would establish that the appellants had made the Department aware of the nature of the activity and were claiming exemption from licensing. The Collector as well as the Board proceeded on the basis that the filing of this declaration (apparently, according to them, under a mistaken impression) would not allow an argument to be raised, on the basis of the same, to disprove the allegation of suppression etc. Shri Jain further contends that it was with reference to this declaration that the authorities in fact subsequently sent to the appellants their circular letter C-No. 7/MP/79/486 dated 14.10.1979 prescribing the form in which they have to maintain their accounts and submit a return. A copy thereof has been filed before us. We find there is no endorsement specially showing that this form was sent to the appellants. As earlier mentioned, it appears to be in the form of a circular letter. Shri Jain submits that the very allotment of a despatch No. (486) to this letter would indicate that the same was specially sent to the appellants. The argument of the appellants is that the authorities acted upon the declaration filed and advised the appellants of the simplified accounts to be maintained by them and thus there can be no question of suppression or mis-statement. We may note that with reference to this argument, the Collector has observed in his order as follows:- "In the circumstances, the so-called advice said to be given by the Inspector has no force of law. The law is very clear on the subject and there was no ambiguity with regard to their duty liability. The circular about exemption from licensing control on which some reliance has been placed by them relates to specific situation and goods produced by them. In the circumstances, their plea regarding wrong advice by Central Excise Officers is no excuse for not discharging their duty liability and for not complying with the required excise formalities." 5. This conclusion of the Collector cannot be accepted. The filing of the declaration as well as the receipt of the advice from the Department were being relied on by the appellants to establish that there was no question of suppression or mis-statement on their part and, therefore, the normal period limitation of six months alone was available to the Department. If the

Collector admits, as he appears to have done, that the Department had advised the appellants in the manner claimed by them, it was not right for him to ignore the same on the ground that the advice was bad and not correct. The Board also in its order observes that at no stage had the appellants approached the Department for issue of a licence or for an order exempting the need for a licence and, hence, the filing of the declaration under Notification No. 111 of 78 (wrongly noted in the order of the Board as Notification 71 of 78) was of no benefit to the appellants. For the reasons stated earlier, this conclusion of the Board cannot be upheld.⁶ The result is that on the facts and in the circumstances of the case, the demand for duty will have to be confined to the period of six months only. The period for which demand has been confirmed being 15.6.1979 to 30.11.1979, the show cause notice dated 27.6.1981 was obviously barred by time. Hence the orders of the lower authorities so far as they related to the confirmation of the demand for duty for the period 15.6.1979 to 30.11.1979 will have to be set aside.

7. The above argument would not apply as regard the goods seized and with reference to which duty was demanded to be paid as well as confiscation ordered subject to redemption. But on this issue, Shri Jain submits that the Board, while accepting that no duty was payable on the dyeing of man-made fabrics, erred in confirming the confiscation of the entire quantity seized. But we see from the show cause notice 20.6.1980. that the 4058.10 metres of cloth seized were cotton fabrics only. Hence the order for confiscation was proper. Shri Jain further submits that part of the said quantity related to redyed fabrics and, hence, no duty should be demanded on such redyed fabrics, redyeing having become necessary to remove certain defects etc. If the appellants are able to establish that duty has been demanded twice on the same fabrics, once at the stage of dyeing and again at the stage of redyeing, the appellants will have to be given the benefit in respect of such redyeing.

8. Shri Jain further submits that the appellants are job workers and duty would, therefore, depend on the value of the fabrics as furnished by the customer. His argument is that no details had been furnished at the time of issue of show cause notice, or even after, as to how these demands were quantified. While the notice dated 27.6.1981 indicates that the figures for computation had been taken from

the registers of the appellants, there is no such indication in the notice dated 20.6.1980. As earlier see the demand for duty (as raised in the notice dated 27.6.1981) has been set aside by us. In quantifying the duty on the seized fabrics, the Department shall indicate the basis thereof before enforcing the said demand.

9. The quantum of redemption fine as well as the penalty has been substantially reduced by the Board. Even with reference to the conclusions we have arrived at, we do not feel that any further reduction is called for in that regard, 10. Accordingly, this appeal is allowed to the extent of setting aside the demand for duty as raised under notice 27.6.1981. The orders of the lower authorities are modified to that extent. In quantifying the duty on the seized goods, the same shall be done in accordance with the directions given earlier.

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