

Hanil Era Textiles Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-15-2005

Reported in : (2005)(192)ELT1109Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Hanil Era Textiles Ltd.

Respondent : Cce

Judgement :

1.1 Appellants is an assessee under Central Excise Act 1944 having an EOU. The issue involved in this case is valuation of the goods cleared from an EOU to Domestic Tariff Act (DTA) after obtaining the permission of Development Commission and within the DTA quota: 1.2 Vide a notice dtd 1.5.2000 it was proposed to recover duty amounting to Rs. 10,60,813/- on clearances of goods effected in DTA during the period December 1999 to March 2000 to a buyer, on the grounds - i) The buyer, M/s Khandelwal Agencies, Ludhiana (hereinafter referred to as Khandelwal for short) was a related person in terms of section 4 of Central Excise Act, 1944 and sale price of Khandelwal should be therefore be the assessable value.

ii) The additional duty was recoverable under rule 9(2) and penalty under rule 173Q was called for 1.3 After hearing the appellant, the lower authority confirmed the duty demands & imposed penalty of Rs 2500/- ; CCE (A) upheld the order, and hence this appeal.

a) the penalty imposed under rule 173Q, applicable to chapter VIII A of Central Excise Rules only to such units as are not excluded by rule 173A(2) EOUs falling under chapter VA of the Central Excise Rules being excluded from the provision of the chapter VIII A, vide rule 17A(2), can therefore be not upheld; it is to be set aside.

b) The provision of duty determination, on arriving at assessee values, under section 4 of the Central Excise Act 1944 cannot be upheld due to the following proviso to section 3 of the Central Excise Act 1944 as regards on EOU clearance to DTA - "[Provided that the duties of excise which shall be levied and collected on any (excisable goods which are purchased or manufactured,- ii) by a hundred percent export-oriented undertaking and allowed to be sold in India.

Shall be an amount equal to] the aggregate of the duties of customs which would be leviable under section 12 of the Customs Act, 1962 (52 of 1962) on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their values; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975)." Therefore valuation has to be restored as per the provisions of section 14 of the Customs Act 1962 & not section 4 of the Central Excise Act 1944 as proposed in these proceedings. The proceedings contrary to the provisions of levy, as per proviso to section 3 of the Central Excise Act 1944, cannot be upheld. c) Demands were required to be made under Section 11A(1) since there is no clandestine clearance demand under rule 9(2) are not called for or be made.

d) Valuations shall be determined as if the said goods are imported in India & Revenues case cannot be upheld on demands based on domestic sale prices were higher as held on Tata Coffee Ltd (2004 (64) RLT 699 CESTAT- Bombay) 3.1 Consequently, the order impugned cannot be sustained. The same is to be set aside & appeal allowed.

3.2 Appeal E/1374/05 & Stay application E/S/1150/05 on the same issue and similar consequences of duty demands & penalty for the period October 1999 to

November 1999 are to be allowed, following our decision in E/2255/03 in appellants own case. Appeal allowed, application stands disposed as a consequence.

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