

Nilon Machine Tools Vs. Commissioner of Cus. and C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-25-2005

Judge : S T S.S., T Anjaneyulu

Appellant : Nilon Machine Tools

Respondent : Commissioner of Cus. and C. Ex.

Judgement :

1. These appeals are being disposed of by this common order as they arise from 'same common proceedings' on the issue of brand name affixed on the machinery resulting in denial of SSI Exemption.

2.(a) Appellants in E/3110/01 are M/s. Nilon Machine Tools who had filed declaration to avail SSI benefit and exemption from Registration.

They were manufacturers of machine tools. The officers visited the premises seized goods affixed with brand name 'Vijay' written in and a particular style within a pentagon. A case was made out resulting in demand of duty of Rs. 6,86,541/- by denial of SSI benefit on the case of another brand name. Confiscation of goods seized worth Rs. 1,49,000/- with a redemption fine offer of Rs. 40,000/- and penalty of Rs. 6,86,541/- under Section 11 AC and Rs. 3,50,000/- under Rule 173Q(1) and redemption fine of Rs. 2.50 lakhs under Rule 173Q(2). On inspection of the alleged Brand name, as per sample in the paper book and keeping in mind the decision of the Apex Court in case of Rukmani Pakkwell Traders , we find no reason to grant the benefit of SSI Exemption for use of the brand name 'Vijay' in a

style within a pentagon' on the plea that Vijay is a common name in Gujarat.

The style adopted is sufficient to call it a brand name to bring in the bar in notification for SSI Exemption. We do therefore find the liability to duty of Rs. 6,86,541/- to be upheld, we find no reason to bring in the bar of limitation under Section 11A(1) in the facts of this unit on basis of declaration made. The demand is for the period 1994-95 to 1998-99 and the penalty under Section 11 AC for the entire period as arrived cannot be upheld. The penalty under Rule 173Q(1) is attracted and confirmed as imposed. We find no reason to call for confiscation under Rule 173Q(2) in the facts of this case, which is an interpretation of notification benefit similarly, no reasons exist to order confiscation under Rule 173Q(1) of the machine found within the premises of the declarant unit.

(b) Appeals E/3111/01 and E/3112/01, after considering the role as brought out in paras 11.5 and 11.4 of the impugned order and the fact that no goods are held to be liable to confiscation, penalty under Rule 209A on these appellants is set aside.

3. Consequent to the findings, the duty demands with penalty of Rs. 3,50,000/- under Rule 173Q(1) upheld other liability set aside and appeals disposed of accordingly.

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