

Manak Textiles Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-18-1988

Reported in : (1989)(42)ELT593TriDel

Appellant : Manak Textiles

Respondent : Collector of C. Ex.

Judgement :

1. Show cause notice dated 28-4-1977 was issued to the appellants M/s.

Manak Textiles Mills alleging that they had manufactured canvas cloth classifiable under Item 19-I(i) CET and had cleared the same without payment of proper duty during the period 1975-76 and a total amount of Rs. 85,725.75 paise was proposed to be recovered from them under Rule 10-A of the Central Excise Rules by way of basic excise duty, auxiliary duty and Cess. The appellants denied that they had manufactured canvas and claimed that they had manufactured and cleared dedhsuti only and, therefore, no amount was recoverable from them. After adjudication the Assistant Collector under his order dated 8-12-1977 confirmed the demand. The appeal against the same was dismissed by the Collector (Appeals) under his order dated 26-8-1983. This appeal is against the said order.

2. We have heard Shri V. Sreedharan, Advocate for the appellants and Shri K.C. Sachar for the Department.

3. The proceedings had commenced with the visit of the members of the Audit Party on 2-7-1976 to the factory of the appellants. That day one Shri Ram Pratap was present and had told them that the Proprietor of the appellant firm by name Shri Durga Dass Bansal was out of station and the records were in the custody of the said person who evidently was not there. Shri Ram Prasad made no statement that day. The officers appear to have visited the Factory on 7-7-1976. That day Shri Ram Pratap had made a statement in the form of a letter addressed to the Audit Officer wherein he had stated that the Central Excise Licence had been taken in April 1974, production commenced in April 1975 and that the cloth being manufactured was of width of 36" and supplied to M/s.

Roshan Lal & Sons and M/s. Bagaria Textiles, both of New Delhi. The same day another letter appears to have been obtained from him to the effect that the appellant factory was receiving yarn from M/s. Bagaria Textiles and cotton canvas was woven on power loom out of the said yarn. It is based on the said letter that the show cause notice mentioned earlier had been issued. After receipt thereof a reply had been sent by the appellants that they had been manufacturing dedhsuti only and not canvas. So far as the statement of Shri Ram Pratap dated 7-7-1976 he had filed an affidavit that he was the elder brother of the Proprietor of the firm and that since the Proprietor was away from Delhi on a trip to Vaishnodevi between 1-7-76 to 10-7-76, Shri Ram Pratap had come down for keeping a watch over the premises against theft etc. and that he was neither the Manager of the firm nor had any personal knowledge of the manufacturing activity and that the Audit Party had obtained the letter from him stating that no further action was to be taken thereon and it was at their instance he had styled himself as Manager in the said letter.

4. It appears from the order of the Assistant Collector that the appellants had requested that enquiries may be made of M/s. Bagaria Textiles also as to what was the nature of the cloth woven by the appellants. It appears from the order of the Assistant Collector that M/s. Bagaria Textiles had stated on enquiry by the Department, that they had supplied dedhsuti yarn to the appellants and got dedhsuti cloth manufactured by the appellants out of the said yarn, but that in 1975-76 they had not supplied yarn or obtained the cloth.

5. It, therefore, appears that no cloth was seized and no cloth was seen or got tested by the Department in order to ascertain whether what had been manufactured by the appellants was really canvas. It is not in dispute that if the cloth manufactured was dedhsuti the demand should fail and therefore, if the Department is to succeed it should be established that the appellants had manufactured canvas and not dedjsito during the relevant period.

6. The only evidence on which the Department, therefore, relied in concluding against the appellants was the statement of Shri Ram Pratap.

No doubt in the statement dated 7-7-1976 (the second statement) he had described himself as the Manager. But he had subsequently filed an affidavit that he was neither the Manager nor was he connected with the affairs of the firm but had come over to Delhi during the time of the visit of the Audit Party merely to keep a watch over to Delhi during the time of the visit of the Audit Party merely to keep a watch over the premises in the absence of his brother (Proprietor) who had gone on a pilgrimage to Vaishnodevi. The Assistant Collector concludes that in the absence of the Proprietor Shri Ram Pratap was his authorised agent and, therefore, his statement would bind the Proprietor. Such a conclusion does not appear to be proper. The Collector (Appeals) holds that if Shri Ram Pratap was not the Manager of the appellants, it had not been disclosed what other work was being carried out by him for his own maintenance and in the absence of any evidence thereof it is evident that Shri Ram Pratap was dependent upon the appellants for his livelihood and his statement cannot, therefore, be ignored. This conclusion of the Collector cannot, be accepted. It is significant that on 2-7-1976 Shri Ram Pratap says he knows nothing about the affairs of the appellants and again on 7-7-1976 makes a statement in the first instance regarding the general working, evidently with reference to the records, and it is only subsequently the same day that the party obtained another statement from him that the appellant that Shri Ram Pratap had no personal knowledge of the manufacturing activity. As already stated he had subsequently filed an affidavit about the same.

The appellants have now produced various records such as the income tax returns, ration card etc. of Shri Ram Pratap to show-that he was a resident of Jind

carrying on his own business and residing there. They have produced a partnership deed dated 3-4-1972 with reference to the said business. These would, therefore, effectively refute the presumption drawn by the Collector (Appeals) that Shri Ram Pratap should have been functioning as the Manager of the appellants.

7. It has to be further seen that M/s Bagaria Textiles had specifically informed the Department they had supplied dedhsuti yarn only and had obtained back dedhsuti cloth only from the appellants. In dealing with this the Assistant Collector states "even dedhsuti has the same pattern of weaving as that of Duck which is quality of Cotton fabrics similar to canvas. When the representative of the party had admitted on 7-7-1976 in their first letter addressed to the AGCR that they manufactured canvas and it was further accepted by the manufacturer and the consignee that dedhsuti was manufactured and despatched and dedhsuti can also be classified as "Duck" if its weight is 8 ozs and above per sqr. yard. In the absence of the samples of the fabrics and admissions by the representative of the firm. I hold M/s. Manak Textiles did manufacture canvas and supplied the same to M/s Bagaria Textiles in the year 1975-76.1, therefore, confirm the demand of Rs. 85,725.75 which should be deposited in any Branch of State Bank of India or Punjab National Bank under the head "038".

8. It is thus seen that the Assistant Collector had drawn inference without any basis therefor. His observation that the product manufactured by the appellants should have been canvas since dedhsuti which could be classified as duck would be canvas if the weight was 8 ozs or more per sqr. yard indicates that the Assistant Collector had drawn the conclusion without any evidence whatever about the actual weight of the material per sqr. yard.

9. It has to be further seen that the entire case rests on the statement of Shri Ram Pratap. The statement is said to have been made to the Audit Party. These members of the Audit Party had no authority to record any statement under Section 108 of the Customs Act as made applicable to Central Excises and Salt Act. If the said statement is, therefore, ignored as not having been recorded by a person authorised to do so there is no other evidence left against the appellants.

10. In the light of the above discussion we hold that the Department had failed to establish that during the relevant period the appellants had manufactured and cleared canvas and not dedhsuti. We, therefore, hold that the orders of the lower authorities are not correct.

11. The appeal is accordingly allowed and the orders of the lower authorities are set aside with consequential relief.

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