Commissioner of Central Excise Vs. Shri Hem Fabrics Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-24-2005

Judge : A Wadhwa, S T S.S.

Appellant : Commissioner of Central Excise

Respondent : Shri Hem Fabrics Pvt. Ltd.

Judgement :
1. Revenue is in appeal. When the matter was called nobody appeared for the respondent. Heard ld. DR.2. The respondent are an assessee engaged in the manufacture of excisable goods, i.e. embroidery on cotton and art silk fabric falling under Heading 58.90 of Central Excise Tariff Act, 1985.

3. The assessee was paying Central Excise duty under Rule 96 ZH of Central Excise Rules, 1944 by taking metre length of the machines as 13.90 metres as declared in their application for permission to avail special procedure. They were 2 rollers on each machines and upon measuring the distance between first and last needles of the lower roller and upper roller of the machine the length worked out to 13.90 mtrs in respect of each roller resulting in payment of duty to the extent of 1/2 metre length of each embroidery machine. Accordingly show cause notice was issued for evading duty for the period 12-3-98 to 31-3-98 and imposition of penalty. The notice was confirmed by the Deputy Commissioner. In appeal, the Commissioner (Appeals) set aside the impugned order after coming to finding : (i) that there? were two show cause notices against the said appellants and main show cause notice was decided by the Commissioner & against that order the

appellant had got stay from CEGAT with waiver and pre-deposit and as per existing instructions in such cases the case required to be adjudicating by the officer who could adjudicating case involving duty of the highest amount. In this view, Commissioner Appeal held that the Dy. Commissioner should not have adjudicated the demand.

(ii) Demand in this case it has been raised under Section 11A(a) of the Central Excise Act, read with Rule 96 ZH of Central Excise Rules, 1944. It was held by the Commissioner (Appeals) under Section HA of Central Excise Act, 1944 and Rule 96 ZH any provision for demanding duty and this ground alone.

(iii) Relying upon Vadodara Collectorate Trade Notices No. 289/69 dated 18-9-1969 which reads: Length of embroidery machine - "Two rollers of framed of an embroidery machine cannot be treated as two machines. That the duty liability of manufacturer has therefore to computed on the basis of the length of one roller of frame of the embroidery machine" would be squarely applicable to the case of the appellants. Moreover, the appellants have taken a plea that vide Notification No. 15/98-CE. (N.T.) dated 2-6-98 which reads as "(a) 'meter length', in relation to a machine, means the distance between the points provided for the first needle and the last needle of only one roller of such machine". There is sufficient force in the contention of the appellant that the above notification being clarificatory in nature has got retrospective effect.

4. The present appeal does not have any ground against the interpretation placed on Notification 15/98-C.E. (NT.) when read with Vadodara Trade Notices 289, dated 18-9-1969. The grounds taken on needle" length are contrary to Vadodara Trade Notice & Trade Notices are issued on instructions given the CBEC and cannot be questioned by Commissioner. There are no other grounds taken in this matter. The Appeal therefore, rejected following the Vadodara Trade Notice procedure.