Commr. of Cus. and C. Ex. Vs. Control Textile Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-02-2006

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Commr. of Cus. and C. Ex.

Respondent : Control Textile Co. Ltd.

Judgement :

2. Revenue filed this appeal against the Order-in-Appeal whereby the benefit of Notification No. 5/99 & 6/2000-C.E. was allowed to the appellant in respect of the goods which were manufactured out of inputs regarding which no proof regarding payment of appropriate duty has been produced.

3. The respondents are engaged in the process of cotton yarn and were availing the benefit of Notification No. 5/99-C.E., dated 28-2-99 & 6/2000, dated 1-3-2000. The notification provides exemption from payment of duty of their final product if the goods are manufactured out of yarn on which appropriate duty of excise has been paid and no credit has been taken in respect of such duty.

4. The contention of the Revenue is that two show cause notices were issued to the respondent for denial of benefit of the notification.

However, on slowing the proof regarding payment of appropriate duty in respect of inputs used in their final product the benefit of notifications were allowed and the benefit was denied to the extent regarding the appellant's fail to produce evidence regarding payment of appropriate duty on inputs. The contention of the revenue is that the Commissioner (Appeals) in the impugned order has wrongly held that it is presumed that all the goods available in the open market are duty paid. The contention is that it is not the benefit of deemed credit or where such presumption is applicable. The Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Rajasthan Spg. and Wvg. Mills Ltd. v. Collector of Central Excise, Jaipur to submit that as respondents were availing the benefit of notification, therefore, it is on the appellant to comply with the notification.

5. The contention of the respondent is that they are undertaking the job work in respect of yarn supplied by their principal manufacturer.

The appellant produced purchase bills in respect of yarn regarding which the benefit of notification has been allowed. The contention is that as the yarn is supplied by their manufacturer, therefore, they are not able to produce the purchase bills etc. in respect of whole quantity of yarn used in their final product. The respondents also relied upon the following decisions of the Tribunal and Hon'ble High Court.(T) Hirdhan Texturising Industries v. CCE & C, Baroda.

6. We find that in this case the respondent as manufacturer wants to avail the benefit of Notification No. 5/99 and 6/2000-C.E. As per the term and conditions of the notification if the yarn has suffered appropriate duty and used in the processing and no credit has been availed, such processed cotton yarn is covered from payment of duty.

The benefit of notifications were denied only to the extent where no such proof regarding payment of appropriate duty on yarn has been produced by the respondent. We find that the Hon'ble Supreme Court in the case of Rajasthan Spg. and Wvg. Mills Ltd. (supra) held that it is for the assessee to establish that the goods manufactured by them come within the ambit of the exemption notification. Since it is a case of exemption from duty, there is no question of any liberal construction to extend the term and the scope of the exemption notification. Such exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification. No extended meaning can be given to the exempted item to enlarge the scope of exemption granted by the notification. As the conditions of the notification is that the yarn has to suffer the appropriate duty to avail the benefit of the notification and appellant failed to produce any evidence regarding payment of appropriate duty on the yarn.

Therefore, in view of the above decision of the Hon'ble Supreme Court the respondents are not entitled to avail the benefit of the notifications. The demand confirmed by the adjudicating authority is restored, however, as the demand is within the normal period, therefore, we find that it is not a fit case for imposition of any penalty. Appeal is allowed as indicated above.