

Mallika Saree Processing Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Apr-07-2006

Reported in : (2006)(110)ECC30

Judge : S Peeran, J T T.K.

Appellant : Mallika Saree Processing

Respondent : Commissioner of Central Excise

Judgement :

1. In all these seven appeals, the issue being common, they are taken up together as per law. In the tabulated column below, the period involved, the date of show cause notice, the duty and penalty is noted below:

Appeal Name	Period	Date of issue	Adjudication	No appellant involved	SCN Levies	duty	Penalty
Mallika Saree	1.4.03 to 17.11.03	Duty 17,79,491/-	processing	22.7.03	Penalty Rs. 20,000		
Prakash Saree	13.9.02 to 12.11.03	Duty 32,72,031/-	E/670/05				
Gayathri Textile	1.3.02 to 25.9.03	Duty 5,30, 110/-	processing	13.8.02	Penalty 10,000		
Rajalakshi	1.3.02 to 25.9.03	Duty 2,79,794/-	Textile	31.1.03	E/672/05		
Venkateswara	1.3.02 to 25.9.03	Duty 5,40,270/-	Saree processing	31.8.03	E/943/05		
Sai Vishnu	1.3.02 to 19.8.2004	Duty 27,13,971/-		E/411/03			
Raja Exports	1.3.02 to 4.11.03	Duty 5,77,685/-		12.8.03			

2. The issue involved in these matters is as to whether the process of decatizing attracts central excise duty after the budget of 2003 and as to whether larger period is attracted in the matter. Taking the second issue into consideration, i.e. pertaining to demands being time barred on the ground that the appellants were carrying on the process

of decatizing without use of power for ducts and the department was aware of the same and that the demands are not required to be confirmed; it is seen that on this ground, the OIA No. 112/05 dated 29.5.05 in the case of Prakash Saree processing, the Commissioner has recorded as follows: At the same time the fact that Government has changed the pattern of valuation from charging duty on the value of the fabrics to the job charges value would show that the Government intended to give relief to these processors. Following the same spirit, I would like to show leniency at least in regard to the penalty imposed on these processors. Moreover, the issue of non-payment of duty was known to the Department through representation given by their Associations to the Chief Commissioner and the whole issue was in correspondence when the adjudicating authority proposed his action of imposing penalty. As such penalty under Section 11AC is not justified. Even the penalty under Rule 25 also not imposable in view of the circumstances explained. Hence, I set aside both the penalties as a relief to the appellants.

3. The learned Counsel pointing out to this piece of finding and to the entire record contended that the fact of the appellants carrying on the process of ducting is nothing but blowing was known to the department for ages. The notifications in question had clearly exempted blowing, and ducting being nothing but a process of blowing as per the evidence produced by them from "Sasmira" and the extract from the Fairchild's dictionary of Textiles, confirmation of demands on imports as well as time bar is not justified. It is their further submission that the process of decatizing does not bring into existence new goods as the process is nothing but steam pressing of sarees to remove wrinkles and creases. Steam is produced by use of coal as fuel and not by electricity. The process of decatizing which is nothing but blowing does not amount to a process of manufacture. Therefore question of levy of duty does not arise. It was also pleaded that in any event they are eligible for deemed credit as per Notification No. 6/02 NT dated 1.3.02. The same is required to be extended. Alternatively, the plea is that besides this benefit, they are eligible for cum duty price benefit. It is further contended that the process of blowing is exempted right from 1996 vide Notification No. 9/96 dated 23.7.96 and hence the question of confirming demand does not arise. It was pleaded that till 2002, the department itself did not initiate action for recovery with a view that decatizing is nothing but blowing. It is submitted that the action has been initiated

in March 2002 merely because in the Notification No. 6/02 "blowing" was omitted. However it was restored by subsequent notifications namely 26/02 and 47/02 and hence the subsequent notifications are nothing but clarificatory in nature and in terms of the Tribunal ruling rendered, in the case of Apex Steels Pvt. Ltd. v. CCE Chandigarh 1995 (80) ELT 368. Such amendment would amount to be treated as clarificatory in nature and hence, demands cannot be raised for the periods in question. It was also submitted that as per the New Textile Policy, with effect from 1.4.03 duty liability is not on job worker but on the weavers/traders and the owners of the goods vide Rule 12B read with press note dated 25.3.03. The job worker did not opt to pay duty. As the department failed to proceed against the traders/weavers, as required under Rule 12B, therefore, the appellants cannot be proceeded for confirmation of duty for fee period from 1.4.03 to 31.3.04. It is further submitted in the case of Sai Vishunu Processing Co. by learned Counsel Shri Ravishankar that there is a demand for the process of calendaring. The process of calendaring has been held to be not a process of manufacture in large number of judgments and these judgments were all considered by this bench in a similar matter in the case of Anand Calendaring Co. v.CCE vide Final Order No. 522/06 dated 21.2.06 and hence demands on calendaring is also required to be set aside in their matter. The judgments referred to in this order are.

(a) Mafatlal Fine spinning and manufacturing Co. Ltd. v. CCE .

(b) Japan Dyeing works v. CCE (upheld by the Apex Court as reported in 1996 (81) ELT A 50 (c) C.cus & CE v. Swastik Dyeing & Bleaching Factory In effect learned Counsels Shri G. Sampath, Shri Vardarajan, Shri Ravishankar, Shri Manjunath have all contended that the process of decatizing is nothing but a process of blowing in terms of Fair Child Dictionary of Textiles. The opinion given by Sasmira dated 5.12.02 which has not been contraverted by the Revenue. As the processors were well known to the department as noted by the Commissioner (Appeals) himself in OIA No. 112/05, the demands cannot be confirmed for larger period. It is submitted that there is no suppression of facts or mis-declaration, hence the question of demanding duty does not arise.

It is further submitted that even for the period 1.4.03 to 31.3.04, the job workers carrying on this process were not required to discharge duty in terms of Rule 12B read with press note dated 25.3.03 and hence the confirmation of demands for this period is also not justified.

4. Learned SDR defended the order and pointed out that Mumbai bench In the case of Deepak fabrics v. CCE Mumbai have held that the process of decatizing is not same as calendaring. However the counsels pointed that it is not their case that calendaring and decatizing is one and the same and hence this judgment is distinguishable. Learned SDR filed detailed written submissions on behalf of the Commissioner. The Commissioner has contended in the submissions that the process of decatizing is not identical to the process of blowing/ steam pressing which had specifically been exempt under Notification No. 47/2002 CE dated 6.9.2002. It is submitted that blowing/steam pressing is exempted only for woven fabrics of acrylic fibre. It is submitted that Notification No. 14/02 CE dated 1.3.02 as amended by Notification No. 40/02 CE dated 14.8.02 vide SI No. 17 charged woven fabrics subjected to the process of calendaring or decatizing or both to 16% advalorem. Therefore it shows the legislative intention to charge the woven fabrics subjected to the process of calendaring or decatizing. It is submitted that once, the process of decatizing is completed, the sarees are neatly stacked and put to sale being ready to use and hence it is a process of manufacture. It is contended that the Notification No. 40/02 CE dated 14.8.02 is not retrospective in effect as the Notifications have effect from the date of its issue. It is also submitted that the value cannot be treated as cum-duty and deemed credit. The Commissioner in the written submissions has therefore prayed for confirmation of demands . He has also said that the demands are not barred by time as the assessee had taken registration certificate from the department with effect from August 03 and at no point of time was the department specifically aware that the unit was carrying out textile process by decatizing and calendaring during March 02. Therefore, the assessee had suppressed the fact from department during the period 1.3.02 to August 03 with an intention to evade payment of central excise duty.

5. In counter all the counsels point to the representation made to the Chief Commissioner, Board and Government prior to these periods and during these

periods. It is their submission that the written submission given by the Commissioner is incorrect in terms of the proceedings and record of the case. They contended that the department was well aware of these processes being carried out by the job workers and exemption had been granted earlier. They also contested about the finding pertaining to the registration certificate taken from the department. It was pointed out that registration was taken only after the Rule 12B came into effect by job workers and that they were required to pay duty on the job work charges. In the present appeals, the issue is different. Learned Counsel Shri Ravi Shankar contended that they had not taken registration in the case of M/s Sai Vishnu processors and hence the submissions made by the Commissioner in his written submissions is not correct.

6. On a careful consideration of the submissions made by both sides, we would like to first deal with the second issue namely the time bar of the demands. The Commissioner in the OIA 112/05 has clearly noted the fact of the assessee carrying on the processes being known to the department and several representations were made by their associations to the Chief Commissioner and the whole issue being in correspondence with the Govt. Further we notice from OIA 148/05 in the case of Shri Sai Vishnu Processing Company that the Commissioner has further noted the same facts with regard to the non-payment of duty being known to the department. Therefore, the representations given by the Associations of Textile manufacturers to the Chief Commissioner and the whole issue being in correspondence was known to the department. In view of this fact, it cannot be alleged that there was suppression of facts with an intention to evade duty. For the purpose of attracting Proviso to Section 11A of the Act, the assessee should be statutorily bound to declare certain details to the department and those details if they have withheld with an intention to evade duty, only then the Proviso to Section 11A can be invoked as held by the Apex Court in large number of judgments. More particularly in the case following cases.

The demands due in all the cases except Rajesh Exports are clearly barred by time. They are set aside including the penalty imposed.

The first issue in this matter is as to whether the process of decatizing is a process of manufacture? The process of decatizing has been explained by the Sasmira report who have clearly given an opinion that the process does not amount to the process of manufacture. The sasmira report is extracted herein below: M/s The Bangalore Silk Saree Finishers Association have sought our opinion on whether process "Blowing" and "Decatizing" are the same in meaning.

Decating or Decatizing are finishing processes used chiefly to improve fabric handle and appearance. It is carried out either as a batch process or as continuous process. The process involves blowing of steam through fabric wrapped on a perforated roller with a smooth cotton wrapper.

The process of decating, decatizing or blowing was used for woolen goods to remove creases and wrinkles that develop during processes like scouring fulling or carbonizing. It was usual to carry out the process by wet decating or wet blowing, accomplished by steam treatment. Alternatively by dry decating or blowing can also be carried out. The above processes have been used for woolen goods for long time. The process of Decatizing is now a days applied to blended/synthetic fabrics also, where dimensional stability is desired.

In the light of above observations, in our opinion the terminologies decating, decatizing and blowing refer to the same process, Even though term Decatizing is more widely used to identify the process.

This piece of evidence was before the lower authorities. They have not obtained any rebuttal evidence. In terms of the above noted expert opinion the process of decatizing and the process of blowing are one and the same. If this contention is accepted, then it follows that the process of blowing had been exempted throughout the period except for the period in question which was also restored by subsequent Notification No. 40/02. It is also seen that this process of decatizing does not bring into existence new goods. For the purpose of this process no electricity is used. The steam is generated through use of coal and fuel. The process only removes creases and wrinkles developed during the process like scouring, fulling, or carbonizing. In order to attract Central Excise duty, the process should bring into existence new goods as held by the Apex Court in the case of

Delhi Cloth and General Mills (1978 ELT J 336 SC). The contention raised by the appellant that this process does not bring into existence new goods and is not a process of manufacture is required to be upheld. Learned SDR referred to the Mumbai Bench Order rendered in the case of Deepak Fabrics cited supra wherein a view has been taken that decatizing process is not calendaring. The contention of the appellant is different and not as held in this judgment. Their contention is that decatizing process and blowing process is one and the same in view of the "Sasmira's" technical opinion which is based on authorities referred in that opinion. Thus we have to hold that this process of decatizing is not a process of manufacture and hence no duty can be levied. Even otherwise as can be seen the department has clearly taken a stand that there was no levy of duty on this process in terms of the Notification No. 3/01 dated 1.3.01 and Notification No. 6/02 dated 1.3.02. No. demands have been raised for periods prior to 1.3.02. The dispute has arisen only after 1.3.02. In the budget 2002-03, the woven fabrics falling under Chapter 54 or 55 subjected to the process of calendaring and decatizing or both on job work basis in a factory were brought under Excise with effect from 1.3.02 by withdrawing the exemption. The Notification No. 14/02 dated 1.3.02 levied duty at 12%.

However, this notification was amended by Notification No. 40/02 dated 14.8.02 by which an explanation was inserted. The demands are restricted to interregnum period from 1.3.02 to 31.8.03 in some cases.

From the periods as mentioned in the chart extracted (supra), it is seen that the process of decatizing/calendering was exempted under Notification No. 3/01 dated 1.3.01 and Notification No. 47/02. The contention is that the Notification No. 47/02 is clarificatory in nature having retrospective effect from 1.3.02 and also Notification 40/02 dated 14.8.02 which inserted an explanation to Notification No.14/02 dated 1.3.02. On a total examination of these notifications, it is clear that the subsequent Notification No. 47/02 dated 6.9.002 was issued by the Govt to restore earlier exemption given by Notification No. 13/01 dated 1.3.01. There were representations made by the Association of Textile manufacturers to the Govt and the Govt has clarified the same by introducing exemption again. Therefore, the Notification No. 47/02 has to be taken as clarificatory in nature. The Notification

No. 40/02 which inserted an explanation is also required to be considered as clarificatory in nature. The judgments on this point which holds that in such circumstances, the notifications are to be read as clarificatory in nature cited by the counsels apply to the facts of the case. The judgments are Apex Steel Ltd. v. CCE In the case of WPIL Ltd. v. CCE it was clearly held that the clarificatory notification merely clarifies the position and makes explicit what was implicit and such notifications would have retrospective effect. On reading the terms of the Notification, it is clear that the Intended benefit was restored and therefore during the integnum period no duty can be levied.

In the case of Shri Sai Vishnu Processing Co demands have been confirmed on the process of calendering in addition to the process of decatizing. We have already noted that demands on calendering cannot be confirmed in view of the Tribunal ruling rendered in the case of Anand Calendering Co (Supra) which refers to various judgments already noted supra.

(b) That the process of decatizing and process of blowing are one and the same and as blowing was exempted, therefore it follows that the process of decatizing is also clearly exempted from levy of Excise duty. The Notification No. 47/02 dated 6.9.02 is clarificatory in nature and hence it has got retrospective effect from 1.3.02.

(c) The process of calendering is not a process of manufacture and no duty can be confirmed. The demands on the job workers from 1.3.03 is not leviable as Rule 12(B) vide Notification No. 24/03 NT dated 25.3.03 and the Govt's press Note 25.3.03 clearly clarifies that the duty has to be levied only on the weavers/dealers and owners of fabrics and not on job workers.

The last contention raised by the appellant is that the duty from 1.3.03 is not leviable on the job workers as Proviso to Rule 12(B) vide Notification No. 24/03 dated 25.3.03 and Govt's Press Note 25.3.03 are as a result of the rule declaring that the duty has to be levied only on the weavers and dealers and owners of fabrics and not on job workers. Therefore, the confirmation of demands from 1.3.03 on the job workers is not sustainable. In the result the appeals are allowed with consequential relief if any.

(Operative portion of the Order already pronounced in open court on conclusion of the hearing)

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