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Standard Niwar Mills Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-25-2006

Reported in : (2006)(110)ECC496

Judge : N T C.N.B., M Ravindran

Appellant : Standard Niwar Mills

Respondent : C.C.E.

Judgement :

1. The appellant is a manufacturer of fabrics, it processes grey cotton fabric. That product was exempt from basic excise duty; but not from additional duty of excise levied under Additional Duty of Excise (Goods of Special Importance) Act, 1957. The appellant used the processed fabrics for captive consumption, without payment either duty.

Therefore, proceedings were initiated for the recovery of the additional excise duty payable on processed fabrics. Under the impugned order the duty demand so made remains confirmed.

2. The contention of the learned Counsel is that, the processed fabric in question remained exempt from additional duty of excise also, in view of the exemption granted from basic excise duty. Reliance is being placed on the judgment of the Hon'ble Bombay High Court in the case of Nirlon Synthetic [1997 (96) ELT 251 (Mum.] in support of the contention that exemption from basic excise duty, granted

under Rule 8 of Central Excise Rules, automatically extended to levy of additional duty of excise also.

3. Learned SDR points out that basic excise duty and additional excise duty under Additional Duty of Excise Act are separate and different levies and specific exemptions are required in respect of each levy under Rule 8 or Section 5A of Central Excise Act Learned SDR also points out that the order of the Bombay High Court does not make a rule that exemption from basic excise duty automatically grants exemption from additional duty also. The judgment only rules that exemption from additional duty also can be granted under of Rule 8 of the Central Excise Rules. Learned SDR also points out that in the present case, there is no exemption from (sic) additional duty of excise in regard to processed cotton fabrics.

4. We have perused the record and considered the submissions made by both sides. We are in complete agreement with the legal position canvassed by the learned SDR. Exemption from basic excise duty and additional excise duty are granted under Rule 8 of the Central Excise Rules or subsequently under Section 5A. While statutory power for granting exemption from both levies are stipulated in the same Rule or Section, that power is required to be exercised in regard to both levies. In the present case, there was no exemption during the relevant period from additional excise duty. Therefore, demand made upon the appellant is entirely in terms of the statute. There is no error in the same.

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