

Commissioner of Central Excise Vs. Modern Denim Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-27-2006

Reported in : (2006)(106)ECC298

Judge : J Balasundaram, Vice, S T S.S.

Appellant : Commissioner of Central Excise

Respondent : Modern Denim Ltd.

Judgement :

1. The issue in dispute in these two appeals filed by the Revenue against the order of the Commissioner of Central Excise (Appeals) is the liability of 100% E.O.U. to levy of additional excise duty under the Additional Duties of Excise (goods of Special Importance) Act, 1957, when the goods are cleared into the domestic tariff area. The respondents were extended the benefit of exemption from payment of Additional Excise Duty (AED) in terms of Notification No. 127/84 by the lower appellate authority.

2. We have heard both sides. The revenue challenges the order of the lower appellate authority on the following grounds: Notfn. No. 125/84-CE dtd. 26/05/84 pertains to excise Duty Payable under Section 3 of the Act while notfn No. 127/84-CE dtd. 26/05/84 pertains to additional duty of excise payable under Section (3) of the Additional Duty of Excise (Goods of Special Importance) Act, 1957. In terms of Section 3 of the Act, excisable goods produced or manufactured in an 100% EOU are liable to such Excise Duty as is an amount equal to the aggregate duties of

Customs which would be leviable under Section 12 of the Customs Act, 1962, on like goods imported into India. Sub-section (1) of Section 12 of the Customs Act, 1962 lays down DUTIES OF CUSTOMS shall be levied at such rates as may be specified under the Customs Tariff Act, 1975...". Sub-section (1) of Section 3 of the Customs Tariff Act, 1975 lays down that "any article which is imported into India shall in addition, be liable to a duty equal to the Excise duty (hereinafter in this Sec, referred to as the additional duty) for the time being leviable on a like article if produced or manufactured in India Therefore, in view of what has been stated in the preceding para, the NATURE of the impost is to be differentiated from the manner of calculation/computation of the IMPOST. The nature of impost leviable on goods manufactured or produced in an 100% EOU is the duty of Excise and only the whole of the duty of Excise leviable under Section 3 of the Act is payable on such goods if allowed to be cleared/sold in India (DTA Sales) vide Notfn. No. 127/84 CE dtd.

26/05/84. The MEASURE of the impost (i.e. manner of calculation/computation of the same which too has been laid down in Section 3 of the Act) is the "aggregate duties of Customs" which as per Section 2 & Section 3 of the Customs Tariff Act, 1975 consist of, inter-alia, the Basic Customs Duty and the Additional Duty of Customs. Again, the MEASURE of Additional Duty of Customs is equal to the Excise duty for the time being leviable on a like article if produced or manufactured in India" in accordance with Section 3 of the Customs Tariff Act 1975, The NATURE OF IMPOST is to be differentiated from the MEASURE OF THE IMPOST. There is but one component of the "aggregate duties of Customs", the other component being the "Additional duties of Customs". The Additional Duty of Customs, which is to be computed/calculated in accordance with Section 3 of the Customs Tariff Act, 1975, is leviable even when any like article produced or manufactured in India is exempt from excise duty as has been laid down by the Hon'ble High Court of Judicature at Bombay in Vijay Prataprai Mehta v. Union of India . It has also been laid down by the Hon'ble Tribunal in Haryana Distillery v. Collector of Customs (Tribunal) that quantum of State Excise duty is taken only as measure for the purpose of levy of additional duty of Customs because of Excise duty referred to in Section 3 of the Customs Tariff Act, 1975 is not confined only to Excise duty leviable under Central Acts but also applies to levy under various

State enactments. In accordance with the ratio of both the above cited decisions, Basic Excise Duty (BED) as well as Additional Excise duty in lieu of Sales Tax (AED), if leviable on like goods produced or manufactured in India (and not in an 100% EOU), would have to be taken into account in order to quantify the measure of Additional Duty of Customs.

Therefore, in view of what has been stated in the preceding para the Additional duty of customs is also payable by the assessee apart from Basic Customs Duty @ 25% Adv. The quantum Additional Duty of Customs is payable to be computed in accordance with Notfn. No. 101/93-CE dtd. 27/12/93 and later under Notfn. No. 2/95-CE dtd.

04/01/95 read with Ministry of Finance F.No. 512/91/93-Cus. VI dated 18/05/94.

Notfn. No. 2/95 CE dtd. 04/01/95 and Notfn. No. 127/84 dtd. 26/05/84 are independent of each other. It may be seen from the language used in Notfn. No. 127/84 dtd. 26/05/84 that it is applicable to goods manufactured in EOU but it is silent about goods cleared from such unit to Domestic Tariff Area. Whereas the Notfn. No. 2/95 CE dtd.

04/01/95 takes care of goods cleared in Domestic Tariff Area only and that it is eloquent enough about leviability of 50% each of the duties of Customs under Section 12 of the Customs Act, 1962 read with any other Notfn. For the time being in force issued under Sub-section (1) of Section 25 of the said Customs Act, on like goods produced or manufactured outside India, if imported into India.

Thus, the Notfn. No. 127/84 dtd. 26/05/84 is not attracted to clearance of goods for DTA.3. We have heard both sides. We find that it is possible to dispose of these appeals in the light of the Apex Court judgment in Nahar Industrial Enterprises Ltd. v. Union of India and that it is not necessary for us to keep this appeal pending to await decision of the Larger Bench in the case of the same assessee when the issue was referred as for the reason that the reference to the Larger Bench is in the context of Notification No. 2/95 providing exemption from payment of basic excise duty while the issue in these two cases is the eligibility to exemption from payment of additional excise duty which is the subject matter of the Supreme

Court decision cited supra in the context of Notification No. 55/91 under the provision of the Additional Duty of Excise (Textiles and Textile Articles) Act, 1978 which is in parimateria with Notification No. 127/84 which is relevant in today's cases.

4. The Apex Court has clearly held in para 11 of its judgment that the introduction of the words "the aggregate of after words "equal to" in Notification No. 8/97-CE relating to basic excise duty by amendment vide Notification No. 11/2000-CE and the introduction of the word "or under any other law for the time being in force" after the words "Section 8 of the Central Excise Act" by the same amendment, does not in any way create a liability on the 100% EOUs to pay AED. Para 11 of the Apex Court judgment is reproduced below- 11. That does not in any way create a liability on the 100% EOUs to pay AED. Notification No. 55/91-C.E., dated 25-7-1991 is in no way diluted so far as the manufacturers like the appellants are concerned, notwithstanding what has been provided in Notification No. 8/97-CM. dated 1-3-1997 as amended by Notification No. 11/2000-C.E., dated 1-3-2000. As stated above, the only change is that under Notification 8/97-C.E., dated 1-3-97 the 100% EOUs were exempt from paying duty in excess of amount of BED paid by the producer or manufacturer who is not 100% EOU, whilst after amendment by Notification 11/2000-C.E., dated 1-3-2000 the 100% EOU is exempt from paying duty in excess of amount of BED plus the amount of AED plus any other duties of excise under any other law for the time being in force, paid by the producer or manufacturer who is not 100% EOU. Thus, the view expressed in the Circular dated 19-12-2000 and view of the High Court are indefensible. The Circular afore-noted is, therefore, quashed.

5. In the light of the above decision which is applicable on all fours to the context of the present case as we are satisfied that Notification in question in these appeals, namely Notification 127/84, is identical to Notification 55/91 interpreted by the Apex court, we hold that there is no ground to interfere with the impugned order of the Commissioner (Appeals) and accordingly uphold the same and reject these appeals.