

Commissioner of Cen. Excise Vs. Nasa

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-17-2007

Judge : J Balasundaram, Vice

Appellant : Commissioner of Cen. Excise

Respondent : Nasa

Judgement :

1. The Revenue is aggrieved by the order of the Commissioner of Central Excise (Appeals) holding that the respondents are entitled to deemed Cenvat credit of Rs. 1,27,807/- on inputs contained in shirts (finished goods) lying in stock as on 21.3.2003 as per Notification No. 35/03 dated 10.4.2003 as amended by Notification No. 47/2003 dated 17.5.2003.

According to the Revenue, the assesses were entitled to deemed credit only to the extent of Rs. 31,501/- under the provisions of Rule 9A3(b)(ii) of the Cenvat Credit Rules, 2002, as the finished goods lying in stock were readymade garments falling under Chapter 62 of the Schedule to CETA, 1985, which were not specified goods under the Notification above named, and had, therefore, availed excess credit of Rs. 96,306/-.

Transitional provisions for Textiles and Textile Articles -- Amount of credit for specified inputs and finished goods-- In exercise of the powers conferred by Sub-rule

(3) of Rule 9A of the Central Excise Rules, 2002 the Central Government, hereby declares, for the purposes of the aid rule, the amount of credit of duty, as specified in column

(3) of the table below, on inputs lying in stock or in process or on inputs contained in finished goods lying in stock, as specified in the corresponding entry in column

(2) of the said Table, namely: Rs. 18 per Kg of texturised yarn multiplied by quantity in Kg of such texturised yarn (a) Unprocessed fabrics of cotton not containing any other textile material; (c) Yarns, which were eligible, for exemption, as on 31st March, 2003, from the whole of the excise duty under notification No. 6/2002-Central Excise, dated the 1st March, 2002 (other than the shoddy Declared value multiplied by 26% of the rate of duty on such unprocessed fabrics Declared value multiplied by 60% of the rate of duty on such unprocessed fabrics

2. Substituted by M.F. & C.A. (D.R.) Notification No. 47/2003 (sic) dated (sic) yarn purchased or procedure from outside the factory, and subjected to any process); (d) Article of apparel and clothing accessories falling under Chapter 61 Declared value multiplied by 12% of the rate of duty on such article of apparel and clothing accessories.] Explanation

1. - For the purpose of this notification, "Deemed value" shall be calculated in the following manner: Deemed value = Declared value multiplied by 95
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2. - For the purpose of this notification, "rate of duty" shall mean the rate of duty leviable under the Central Excise Tariff Act, 1985 (5 of (sic)) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978), as the case may be, read with any notification, as on the 1st day of April, 2003; Explanation

3. - For the purpose of this notification, "composite mill" means a manufacture who is engaged in the processing of fabrics with the aid of power along with the spinning of yarn from fibres and weaving of knitting or crocheting of fabrics within the same factory and includes a multi-locational composite mill, i.e., a public

limited company which is engaged in the processing of fabrics with the aid of power along with the spinning of yarn from fibers and weaving of knitting or crocheting of fabrics in one or more factories owned by the same public limited company.

[Notification No. 35/2003-C.E. (N.T.), dated 10-4-2003 as amended by Notification No. 47/2003-C.E. (N.T.), dated 17-5-2003] 3. The finished goods in this case are articles of apparel falling under Chapter 62 which are not specified finished goods under the Notification. Credit of duty on inputs contained in specified finished goods lying in stock is admissible as per the Notification. Therefore, although the inputs are specified, since the finished goods lying in stock in which the inputs are contained are not specified finished goods, the respondents are not eligible to deemed credit in terms of the above Notification. The case law relied upon by the assesses viz.

the Larger Bench decision in CCE v. Entremonde Polyecoaters Ltd. is distinguishable from the facts of this case, as the issue before the Larger Bench was in the context of eligibility to the benefit of exemption under Notification No. 63/87-CE dated 1.3.1987 which was held to be admissible to finished products containing base fabric of cotton, irrespective of the fact that the cotton was not classifiable under Chapter 52 and the Notification granted exemption to textile fabrics, impregnated, coated, covered with plastics falling under Tariff sub-heading 5903.19 from payment of duty in excess of Rs. 7 per square metre plus the duty for the time being leviable on the base fabric under Chapter 52. As per the provisions of Notification 63/87-CE exemption was available to specified finished goods while in the present case, Notification 35/03 specifies the inputs as well as the finished goods in which specified inputs are contained.

4. In the light of the above discussion, I hold that the respondents are not eligible to credit in excess of Rs. 31,501 and are liable to pay the excess credit of Rs. 96,306. However, since the issue relates to interpretation of Notification, no penal action is called for against the respondents and I accordingly hold that they are not liable to any penalty.