

Loyal Super Fabrics Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Feb-12-2007

Reported in : (2007)(119)ECC145

Judge : P Chacko, K T P.

Appellant : Loyal Super Fabrics

Respondent : Cce

Judgement :

1. M/s. Loyal Super Fabrics, Cuddalore (hereinafter referred to as 'the assessee') are engaged in the manufacture of processed cotton yarn (Heading 52.03 of CETA Schedule), processed polyester yarn (Heading 55.09), processed cotton fabrics (Heading 52.07), processed man-made fabrics (Heading 55.12), processed cotton knitted fabrics (SH 6001.11) and processed man-made knitted fabrics (SH 6001.12). M/s. Loyal Textile Mills Ltd., Kovilpatti (LTML, for short) are manufacturers of cotton and man-made fabrics as well as cotton and man-made knitted fabrics.

Since they have no processing facility at Kovilpatti, they sent these fabrics to the assessee for processing. The Asst. Commissioner of Central Excise, Kovilpatti vide his letter dated 30.11.2001 permitted M/s. LTML to clear grey fabrics without payment of duty, to the assessee for processing and to get back the processed fabrics without payment of duty for conversion into garments for export in terms of Rule 19 of the Central Excise (No. 2) Rules, 2001 read with Notification No.

43/2001-CE (NT) dated 26.6.2001. Accordingly, M/s.

LTML were clearing grey fabrics without payment of duty to the assessee for processing and the latter was clearing the processed fabrics without payment of duty, to the former for conversion into garments for export. The department issued the following eight show-cause notices to the assessee for recovery of a total amount of duty of Rs. 5,87,94,338/- from them: The above SCNs alleged that, as the grey fabrics had been "manufactured" and not "procured" by M/s. LTML, the benefit of the above Notification would not be applicable to such fabrics received at the assessee's factory for processing and subsequent clearance to M/s.

LTML. On this basis, it was alleged that the processed fabrics removed from the assessee's factory to M/s. LTML during the period of dispute were not eligible for the benefit of the above Notification issued under Rule 19 of the Central Excise (No. 2) Rules, 2001 and hence duty of excise should have been paid on such clearance. It was, further, alleged that the exemption under Notification No. 214/86-CE dt. 25.3.86 as amended was not available to the processed fabrics removed by the assessee to M/s. LTML during the said period. The SCNs also sought to levy interest on duty under Section 11AB of the Central Excise Act and to impose penalty on the assessee under Rule 25 of the Central Excise (No. 2) Rules, 2001/Central Excise Rules, 2002. In their replies to the SCNs, the assessee submitted that, as long as the Asst. Commissioner's permission to M/s. LTML to clear grey fabrics without payment of duty, to them for further processes of bleaching/dyeing and to get back the processed fabrics without payment of duty for the manufacture of garments for export by M/s. LTML following the procedure laid down under Rule 19 of the Central Excise (No. 2) Rules, 2001 read with Notification No. 43/2001-CE (NT) was in force, they were entitled to remove the processed fabrics to M/s. LTML without payment of duty. They argued that the term "procurement" could not be interpreted to restrict the benefit to excisable goods procured from outside and that captive removal of goods for the purpose of utilization in the next process should also be understood as "procurement". Further, they relied on the Board's Circular No. 303/19/97-CX. dt. 11.3.97 and Circular No.229/63/96-Cx. dt. 8.7.96 in support of their plea that the benefit under Rule 19 ibid (corresponding to erstwhile Rule 13 of the Central Excise Rules,

1944) was not deniable to them as long as the processed fabrics cleared by them to M/s. LTML were used only for the manufacture of export goods. They pointed out that the new Rule 19 of the Central Excise (No. 2) Rules, 2001 read with Notification No. 43/2001-CE (NT) had only simplified the procedure laid down under the erstwhile Rule 13 of the Central Excise Rules, 1944 read with Notification No. 47/94-CE (NT). The new provisions were not to be understood as having abrogated the benefit available under the old provisions. In adjudication of the dispute, learned Commissioner confirmed the demand of duty against the assessee under Section 11A(1) of the Central Excise Act with interest thereon under Section 11AB of the Act. He, however, dropped the proposal for imposing penalty.

2. The department's appeal is against the dropping of penalty, while the assessee's appeal No. E/638/2003 is directed against the demand of duty with interest as confirmed in Order-in-Original No. 9/2003 dt.

30.5.2003. In appeal No. E/313/2004 filed against Order-in-Original No.17/2003 dt. 21.11.2003 of the Commissioner, the assessee is aggrieved by a similar demand of duty of over Rs. 2.9 crores for the period July to December 2002 as also against a penalty of Rs. 30 lakhs. Appeal No.E/1388/04 filed by the assessee is against Order-in-original No. 8/2004 dt. 14.7.2004 passed by the Commissioner raising a similar demand of duty of over Rs. 2.1 crores and imposing a similar penalty of Rs. 25 lakhs for the period January to March 2003.

3. The assessee's case is that they were entitled to duty-free clearance of processed fabrics to M/s. LTML on the strength of the permission granted to M/s. LTML by the jurisdictional Asst.

Commissioner. This permission was communicated to M/s. LTML in a letter dated 30.10.2001 of the Superintendent of Central Excise, which reads as under: Please refer to your letter dated 15.10.2001 on the above subject.

In this regard, the Assistant Commissioner of Central Excise, Kovilpatti has permitted you to clear grey fabric without payment of Central Excise Duty to Loyal Super Fabrics Ltd., Cuddalore for further processing of bleaching/dyeing and get

back the processed fabrics with out payments of Central Excise duty for Garment manufacturing and export from your Mills. In this connection, the Assistant Commissioner of Central Excise, Kovilpatti Division has instructed you to follow the procedure laid down under Rule No. 19 of Central Excise (No. 2) Rules 2001 read with Notification No. 43/2001 dated 26.6.2001.

The above permission enabled M/s. LTML to clear grey fabrics without payment of duty, to the assessee for further processing (bleaching/dyeing) and get back the processed fabrics without payment of duty for manufacturing garments for export. M/s. LTML were liable to follow the procedure laid down under Rule 19 of the Central Excise (No.2) Rules, 2001 read with Notification No. 43/2001-CE(NT) dt. 26.6.2001.

It is also on record that M/s. LTML were enjoying similar facility under Rule 13 of the Central Excise Rules, 1944 read with Notification No. 47/94-CE (NT) dt. 22.9.94. The permission given by the jurisdictional Asst. Commissioner to M/s. LTML in 1997 under the erstwhile Rule 13 was being continued under the new Rule 19 of the Central Excise (No. 2) Rules, 2001. In the impugned orders, learned Commissioner has chosen to decide as to whether the continued permission under Rule 19 ibid read with Notification No. 43/2001-CE (NT) was correct. After examining the relevant provisions of the said Rule and Notification, learned Commissioner has taken the view that "procurement of excisable goods" by the exporter in terms of Notification No. 43/2001-CE (NT) was a prerequisite for the assessee to avail themselves of the benefit under Rule 19 read with the Notification. He noted that M/s. LTML had not 'procured' grey fabrics and had only 'manufactured' the same and, therefore, the assessee was not entitled to claim the benefit of Rule 19 read with the Notification in respect of the products manufactured by processing such grey fabrics. Ld. Commissioner, further, observed that the permission given to M/s. LTML by the jurisdictional AC itself was beyond the scope of "enabling provisions/notification". We are unable to accept the decision of the Commissioner, which is contrary to the expressed provisions of Rule 19, which reads as under: RULE 19. Export without payment of duty. - (1) Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may

be approved by the Commissioner.

(2) Any material may be removed without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, for use in the manufacture or processing of goods which are exported, as may be approved by the Commissioner.

(3) The export under Sub-rule (1) or Sub-rule (2) shall be subject to such conditions, safeguards and procedure as may be specified by notification by the Board.

Notification No. 43/2001-CE (NT) dt. 26.6.2001 was issued under Sub-rule (3) of Rule 19 *ibid* and the same laid down "the conditions, safeguards and procedures for procurement of the excisable [goods] (*sic*) without payment of duty for the purpose of use in the manufacture or processing of export goods and their exportation out of India, to any country except Nepal and Bhutan." The conditions, safeguards & procedures for such procurement are the following: (i) the manufacturer or the processor intending to avail benefit of this notification shall register himself under Rule 9 of the Central Excise (No. 2) Rules, 2001; (ii) provisions of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 shall be followed, *mutatis mutandis*; (iii) the manufacturer or processor shall, while filing declaration under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, also declare ratio of input and output and rate of duty payable on excisable goods to be procured without payment of duty; (iv) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall also verify the correctness of the ratio of input and output and other particulars mentioned in the declaration filed before commencement of export of such goods. He may, if necessary, call for samples of finished goods or inspect such goods in the factory of manufacture for verifying the declarations. He shall, after being satisfied about the correctness of declarations, countersign the application in the manner specified in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001; (v) The manufacturer or processor may remove the excisable goods

so received as such or after these have been partially processed during the course of manufacture or processing of finished goods to a place outside the factory - (a) for the purpose of test, repairs, refining, reconditioning or carrying out any other operation necessary for the manufacture or processing of the finished goods and return the same to his factory without payment of duty for further use in the manufacture or processing of finished goods or remove the same without payment of duty in bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the said factory of the manufacture or processing.

(b) For the purpose of manufacture of intermediate products necessary for the manufacture or processing of finished goods and return the said intermediate products to his factory for further use in the manufacture or processing of finished goods without payment of duty or remove the same, without payment of duty in bond for export, provided that the waste, if any arising in the course of such operation is also returned to the factory of the manufacturer or processor; and (c) Any waste arising from the processing of the excisable goods may be removed on payment of appropriate duty as if such waste is manufactured in the factory of the manufacturer or processor; (vi) the goods shall be exported on the application in Form A.R.E.2 specified in the Annexure and the procedures specified in Ministry of Finance (Department of Revenue) notification No. 40/20 Central Excise (N.T.), dated 26th June, 2001 or in notification No. 42/2001-Central Excise, dated 26th June, 2001 shall be followed.

The meaning of the expression "procurement" used in the Notification should be gathered with reference to Sub-rule (2) of Rule 19 and it will be clear that the said expression did not mean 'procurement' of grey fabrics by the exporter (M/s. LTML) for the purpose of supply to their job worker (assessee). It meant procurement of processed fabrics by the exporter from the job worker, without payment of duty, for the purpose of manufacturing garments and exporting the same under bond.

Rule 19(2) clearly permits removal of any goods by the manufacturer to job worker without payment of duty. This benefit cannot be abrogated by the Notification issued under the Rule. The procedure under Notification No. 43/2001 is applicable

where the goods are procured and not where they are manufactured. The Board's circulars relied on by the assessee are, apparently, supportive of this view. The assessee is also aggrieved by denial of the benefit of Notification No. 214/86-CE by the Commissioner. Their counsel has relied on the Tribunal's decision in *M. Tex and D.K. Processors (P) Ltd. v. Commissioner* 2001 (136) ELT 73 (Tri.-Del.), wherein it was held that the appellants (job workers who received inputs from their principal manufacturers under challans issued under Rule 57F(4), as this rule stood during the relevant period, and returned the said goods after carrying out the process of heat-setting and stentering on job work basis to the principal manufacturers) were not required to pay duty on the goods so returned.

The cited decision of the Tribunal was affirmed by the Supreme Court vide *Commissioner v. M. Tex and D.K. Processors (P) Ltd.* wherein it was held as under: These appeals were adjourned on 30th April, 2002 to facilitate the Seamed Attorney General to find out whether the facts of the appeals are covered by the Circular of the Central Board of Excise and Customs, New Delhi No. 306/22/97-CX., dated 20th March, 1997.

Learned Attorney General after examining the same today has conceded that the Circular covers the facts of these cases against the Revenue. Therefore, these appeals are dismissed.

4. The above circular of the Board was relied on by the assessee before us also. In view of the decision in *M. Tex* case, the denial of exemption under Notification No. 214/86-CE, to the assessee by the lower authority cannot be sustained. The decision of the Tribunal in *Modern Mills Ltd. v. Collector*, relied on by Id.counsel, is also supportive of the assessee's case.

5. In the result, we hold that the assessee was entitled to remove processed fabrics without payment of duty, to M/s. LTML during the period of dispute in terms of Rule 19 of the Central Excise Rules, 2001 read with Notification No. 43/2001-CE (NT). Accordingly, their appeals are allowed. Consequently, the Revenue's appeal for imposing penalty on the assessee gets dismissed.