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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-05-2007

Judge : A Wadhwa, A T K.K.

Appellant : Commissioner of Customs

Respondent : Adarsh Woolen Industries

Judgement :

1. Being aggrieved with the order passed by the Commissioner (Appeals), vide which he has allowed clearance of "Synthetic Waste", after mutilation and has lowered the redemption fine and penalty amount, revenue has filed the present appeal.

2. As per facts on records, the respondents imported Synthetic Waste from Italy against advance licence, claiming the benefit of Notification No. 43/2002-Cus. dated 19-4-2002. The said goods were examined and revenue entertained a view that the same was "Acrylic Tow" and not "Synthetic Waste", as declared by the respondents. Accordingly, samples were drawn and sent for test to Bombay Textile Research Association (BTRA), Mumbai, Textile Committee, Worli and DYCC Lab. The test report confirmed that the goods in question were "Acrylic Tow".

The denier was found to be ranging between 1.9 to 2.7 and by adopting the value of "Acrylic Tow" of Denier 3.0, the assessable value of the goods was also enhanced. It was also felt that the goods were liable to antidumping duty being

"Acrylic Tow".

3. On the basis of above facts, proceedings were initiated against the respondents, which culminated into an order passed by the original adjudicating authority that the goods were mis-declared as "Synthetic Waste", whereas the same were "Acrylic Tow". Accordingly, the goods were held liable to confiscation. However, an option was given to the respondents to clear the same on payment of redemption fine of Rs. 3 lakhs. Value of the goods was also enhanced to Rs. 15.05 lakhs and anti-dumping duty was held liable to be paid. In addition, personal penalties were imposed on the respondents as also upon the partners.

4. On appeal against the above order, the appellate authority took into consideration the test report of various test houses, which was varying as regards the presence of the crimp. As such, he held that inasmuch as the goods are not of prime quality and are of assorted/different denierages, they had been correctly described as "Synthetic Waste". He also took into consideration the assessee's prayer to mutilate the goods before clearance and held that in view of the apprehension of the Customs authorities, the goods should be released to the importer after mutilation. He also held that enhancement of value was not justified inasmuch as the value cannot be enhanced based upon the comparable value of higher and uniformed denier of the goods. Similarly by relying upon the earlier decision of the Tribunal in the case Beeta Exports v.Commissioner , he held that anti-dumping duty cannot be imposed by circulars issued by the ministry inasmuch as the same can be imposed by the Central Government by way of issuance of Notification in the official gazette. However, he took note of the fact that there was some excess weight of the goods and held the same as liable to confiscation. Considering long demurrages for more than two years, he reduce the fine amount to Rs. 50,000/- and penalty to Rs. 25,0000/-.

He, however, set aside the penalties on the partners by taking note of the fact that the assessee is in the business of import of "Synthetic Waste" for a number of years and no irregularity has ever been found.

The said order of the Commissioner (Appeals) is appealed against before us.

5. After hearing both sides and after going through the impugned order of the Commissioner (Appeals), we find that the appellate authority has taken into consideration the entire facts and circumstances of the case including the report of three different laboratories. He has noted that textile committee's report has described the goods as having - "hard portions with excessive crimp". Similarly in the report of NITRA, Panipat, it was mentioned that there is - "defect heat set hard portion with excessive crimp". Accordingly, he has observed that when there are different test report showing that the material was having crimp and was not of uniformed denier, the benefit of doubt has to go to the importer and the consignment has to be treated as that of Synthetic waste. We do not find any infirmity in the above view of the appellate authority. In any case, the appellate authority has held that the goods to be cleared after mutilation, the cost of which would be borne by the assessee. As such, the order passed by the appellate authority cannot be faulted upon.

6. As regards the valuation of the goods, we agree with the appellate authority that the value of the goods in question, which are having assorted denier cannot be enhanced, by comparing the same with the value of the other consignment of uniformed denier 3.0.

7. As regards anti-dumping duty he has rightly observed that the same can be imposed upon Central Government and not by the circulars of the Board. For arriving at the above conclusion, he has followed the Tribunal's precedent decision in the case of Beeta Exports. No infirmity can be found in the above view.

8. The appellate authority has held the goods liable to confiscation on the basis that there was excess weight of around 216.50 Kg noted at the time of examination of the goods. The same stands re-calculated to 3675.10 Kgs based on moisture contents of 1.6%. However, he has reduced the fine and penalty by taking into account various factors. We do not intend to interfere in the above quantum inasmuch as the reduction of the same is based on the justifiable reasons.

9. In view of our foregoing discussion, the appeal filed by the revenue is rejected.