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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-29-1983

Reported in : (1983)(14)ELT2076TriDel

Appellant : Stretchlon Pvt. Ltd.

Respondent : Collector of Customs

Judgement :

1. The five appeals, captioned above, involve common questions arising out of consolidated Order-in-Appeal passed by the Appellate Collector of Customs on 17-9-1980 whereby he dismissed five separate appeals, filed by the appellants against the Orders of the Assistant Collector, passed separately rejecting the refund claims of the appellants.

2. The question which falls for determination in these appeals, pertains to the interpretation of the wording of a Notification, whereunder the appellants claimed exemption from payment of customs as well as auxiliary duty on the yarn imported by them, by way of replenishment, under Import Licence, against export of fabrics effected by them.

3. It would be expedient to reproduce the relevant portion of the said Notification, in order to properly appreciate the scope of the controversy. The Notification under reference being Notification No.20/F. No. 609/192/ 76-DBK dated 7th February, '1977, so far as it is relevant for the purposes of these appeals, reads as under :- G.S.R. NO. 4. In exercise of the powers conferred by Sub-section (1) of Section 25

of the Customs Act, 1962 (52 of 1962), read with Sub-section (4) of Section 32 of the Finance Act, 1976 (66 of 1976), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts Nylon Filament Yarn and Polyester Filament Yarn, imported into India under/in accordance with the terms and conditions of an import replenishment licence issued under the Imports (Control) Order, 1955, against exports of :- (1) Nylon filament yarn fabrics, made-up articles, quilted fabrics and quilted blankets other than hosiery, knitwears and embroidered fabrics; (a) the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and (b) the whole of the auxiliary duty of Customs leviable thereon under Sub-section (i) of Section 32 of the said Finance Act.

The importer produces a Certificate from the Authority issuing the Import Replenishment Licence or an endorsement by the said authority on the said licence/s specifying the value of Nylon Filament Yarn or Polyester Filament yarn or both, as the case may be, allowed to be imported under the said licence against exports of the aforesaid products." 4. The appellants, who state themselves to be manufacturers/exporters of Nylon Fabrics and Circular Knitted Nylon Fabrics for Dress Materials, claim to have exported various consignments of Nylon fabrics for dress materials during the year 1976-77 and having obtained Import Licences (REP) for the import of Polyester filament yarn. They imported several consignments of the aforesaid yarn against said licences during the aforesaid period. The Notification on which the appellants place reliance had provided that polyester yarn and Filament yarn when imported in accordance with the terms and conditions of an Import Replenishment Licence issued under the Import Control Order, 1955 would be exempt from the whole of customs duty as prescribed in the First Schedule to the Tariff as well as the auxiliary duty. The requisite conditions, according to the appellants, to become entitled to this benefit, were that the licence issuing authority itself shall indicate the value of either the Polyester filament yarn or Nylon Filament yarn or both which was covered by the said licence and further that the "Import Replenishment Licence" so issued shall be against export of fabrics other than "hosiery, knitwears and embroidered fabrics".

5. Both the appellants claimed that they had requisite import licences which had been issued by the Import Trade Control authorities, whereunder permission to import Polyester/ nylon Filament yarn of given amount was accorded to the appellants against the export of the items, detailed in the respective licences. After effecting the clearances from the bonded warehouses on payment of customs and auxiliary duties as levied, they filed refund claims, pleading that the said imports were covered by the terms of the Notification set out above. Since clearances had been made on different dates, three refund claims were filed separately by M/s Stretchlon (Private) Ltd., (Appellants of the first group) and two by the Stretch Fibres (India) Ltd. (appellants for the second group).

6. The Assistant Collector rejected all the refund claims on the view that the benefit of the Notification was available only for yarn imported against exports of nylon or polyester mixed fabrics, whereas the goods exported by the appellants were knitwear and hosiery fabrics, and consequently the benefit of that Notification could not extend in the case of imports effected by the appellants, which were the subject matter of the refund claims before him.

7. Both the appellants carried the matter to the Appellate Collector by way of appeals but the Appellate Collector also took the same view namely that exemption granted in the Notification was not applicable in the case of these imports inasmuch as what has been exported was in the nature of hosiery fabrics and since these were excluded from the contemplation of the said Notification; the appellants were not entitled to the benefit of said Notification. He further added that even the endorsement on import licences as stipulated in the Notification; namely, a certification from the concerned authority to the effect that the import licence was against exports of given category of articles of fabrics, had been obtained subsequent to the importation, and clearance of the yarn from the warehouse, and as such on the date of importation and clearance for home-consumption, the condition imposed by the notification; namely, the one requiring endorsement on the import licence, was not satisfied and on that ground also, appellants were disentitled from claiming exemption. He thus confirmed the order of the Assistant Collection rejecting all the refined claims.

8. The appellants feeling aggrieved by the rejection f their appeals filed a revision petition in relation to all the matters, disposed of by the Order-in-Appeal, before the Central Government, which have received by the Tribunal to be disposed of as appeals, in view of the provisions of Section 131B(2) of he Customs Act, 1962.

9. The appeals were taken up together for disposal, as they involve identical questions of fact, and interpretation of the Notification.

Shri R.C. Pandey, Advocate. He straightway brought into focus the terms of the Notification which fall for consideration in this case and contended that a plain reading of the Notification, a copy whereof has been supplied to the Tribunal (para 51), makes it manifest that the exclusion Clause (1) extends to 'hosiery and knitwear separately and 'embroidered fabrics' as an altogather separate category. According to him, both the lower authorities have erred inconstruing the scope of this notification by reading it to mean that the term 'fabrics' was qualified by the three expressions preceding it so as to be read as 'hosiery fabrics', knitwear' always connoted finished goods, ready to wear, and no such term as 'hosiery fabrics' or knitwear fabrics' was known to the trade. He emphasised that the intention was clearly that in case fabrics other than embroidered had been exported in running length as dress material, the imports made against them in terms of replenishment licences would be exempt from customs as well as auxiliary duty whereas export of ready-made articles of hosiery or knitwear could not be considered for these purpose. He fortified this interpretation by referring to a subsequent notification, being notification No. 159/F. No 609/49/77-DBK which was subsequently issued on 15-7-1977(page 53 of the paper Book) in which this distinction had been clearly brought out by putting "embroidered fabrics" as a separate category, and showing "hosiery" and "knitwear" in a separate sequence.

He emphasised that this clearly showed that there "embroidered fabrics" was category apart and that the lower authorities have a misconstrued the true meaning and import of the notification, under reference.

10. He also referred to dictionary meaning of the term 'hosiery' where this term is shown to have been derived from the term 'hose': which in turn, means a tight fitting outer garment worn by men covering the hips, legs and feet or extending

only to knees or ankles, and further pointed out that 'hosiery' has been defined to refer to 'hose collectively' or 'knitted goods'. During arguments, he had only one such dictionary; namely, Chambers Twentieth Century Dictionary, 1968 Edn. But he undertook to furnish extracts from said dictionary as well as other dictionaries of standing. He also placed reliance, High Court in case entitled Darshan Hosiery Works v. Union of India reported in 1980 ELT 390 (Guj). He thus reiterated his contention that the term ' hosiery' could never be understood even academically much less commercially, to relate to fabrics, and that as such the fabrics exported by the appellants against which the benefit of the notification was being claimed, would never fall under the category of 'hosiery' or 'hosiery fabrics".

11. He also pointed out the error in the observations made by the Appellate Collector that the appellants were otherwise also not entitled to claim exemption having not satisfied the conditions stipulated therein by observing that the endorsement on the import licence had been obtained subsequent to the clearances from the warehouse and pointed out that these observations were, the on face of the record, erroneous, but during reference to the annexure, appended to the Order-in-Appeal, he conceded that two of such clearances, namely, at Nos. 3 and 5 of the said Annexure, could be said to have been made before the endorsement on the licences but with reference to those two also, he asserted that the only condition of the notification being that the imports were against export of certain category of goods of a given value and that fact having been duly endorsed by the concerned authority, which endorsements were obtained before the refund claims were filed; the appellants have to be deemed to have satisfied all the conditions contemplated by the said notification, and that the view taken by the Appellate Collector was a mistaken view, and he further erred in taking new grounds on his own which had nowhere figured in the order of the Assistant Collector and consequently the appellants had had no occasion to explain to the Appellate Collector that they had complied with the requisite conditions.

12. On being pointed out that the import licences were in favour of the State Trading Corporation (STC in short), he assured that there was a letter of authority duly issued by the STC in favour of the two appellants and he undertook to supply photostat copies of the same.

13. He further clarified that the refund claim in respect to M/s Stretchlon (Private) Ltd. has been claimed by mistake for the whole of the amount of the exported goods and to the extent that it covers export of stretched Nylon Socks/Hosiery of the value of R's.

2,54,153/-, he conceded that this would be covered by the exclusion clause of the notification with the result that the said appellants would be entitled only to the refund of a sum of Rs. 2,12,545 in respect of the export of crimp nylon knitted fabrics and to that extent, the refund claim may be treated to stand modified.

14. Shri K. Chandramouli, SDR appearing for the respondent countered the arguments put forward by learned counsel for the appellants, by contending that he fully shared the view held by the lower authorities, and that the relevant portion of the notification has to read to exclude three types of fabrics, namely, 'hosiery fabrics', 'knitwear fabrics' and 'embroidered fabrics'. He further asserted that the goods exported, against which the benefit was being claimed, clearly carry the description as : 'crimp nylon knitted fabrics' and as such they would fall within the description of 'hosiery fabrics' and thus disentitle the appellants from claiming exemption with reference to Notification No. 20 of 7-2-1977. When asked by the Bench that in case the term 'hosiery' were to be read to be attached with 'fabrics', then the 'hosiery' itself, which term apparently applied to finished goods or article of hosiery, would stand excluded and that could not have been the intention of the Notification, he had no particular comments to offer. He further defended the order of the Appellate Collector in regard to disentitlement to benefit of this Notification for failure to comply with all the conditions, stipulated therein, and asserted that the relevant time to have the endorsement was the time of the clearances, and that the appellants could not take recourse to any endorsement obtained subsequent thereto because the notification lay emphasis on the fact that the endorsement has to be produced at the time of clearances.

15. The appellants' counsel made a short reply to this by again asserting that this being a matter arising out of refund application, all that was required by the appellants to establish was, that at the time of claiming refund they satisfied all the conditions and since refund claims were filed within the time provided by law, the

appellants could not be held disentitled to claim exemption from payment of customs and auxiliary duty, simply because in relation to some of the consignments, the endorsement was subsequent to the date of clearances, by the appellants.

16. We have given very careful consideration to the issues involved which primarily relate to the interpretation of the exclusion clause contained in the notification under reference. We find force in the contention raised by the appellants because a plain reading of Clause (1) of this Notification makes it abundantly clear that the expression 'hosiery' stands by itself and so is the term 'knitwear', (mistyped as 'knitwears'), and the same cannot be linked to the last item of this clause; namely, 'embroidered fabrics'. There can be no disputing the proposition that the term 'hosiery' has a distinct meaning in trade parlance? and also for the consumer, and when one talks of hosiery; reference is always to 'finished and ready to wear goods'. The term 'hosiery' has thus a definite connotation, and is used as a noun. In case the interpretation put forward by the departmental authorities is to be countenanced then the use of this term 'hosiery', when qualifying the term 'fabrics' converts it into an adjective with the obvious result that the hosiery articles as such would go out of the exclusion clause. When confronted with this situation that in the same sentence, a word could not be read both as a noun and as an adjective, the learned Departmental Representative could not concede that the articles of hosiery would not be excluded from the benefit. If that is so, then the term 'hosiery' has to be read independently of the 'fabrics'. This inference becomes all the more logical when the last hanging words of this clause are read cumulatively because in between the term 'hosiery' and 'embroidered fabrics' appear another category; namely 'knitwear'.

Now, this term kintwear, according to all common understanding and trade parlance invariably connotes ready goods or garments and there is no such term known as 'knitwear fabrics'. This expression, intervening between 'hosiery' and 'embroidered fabric', in the subject notification further highlights the fallacy of the view taken by the departmental authorities because 'knitwear' by itself can never be correlated with fabrics and so the expression 'hosiery', appearing before 'knitwear' cannot be tagged on to 'fabrics'. Apart from this plain construction which

arises out of the scheme of the expressions, and the sequence in which they appear in this clause, we further find that the common understanding of the expression 'hosiery' is always recognised, to relate to finished goods.

17. The appellants have furnished extracts from several dictionaries of repute to fortify their contentions that the term 'hosiery' by itself has always reference to ready-made garments. We would like to reproduce, in this connection, some of the extracts : "I. Websters New World Dictionary (Second College Edn., 1970- p.

678) 'Hose'-1. an article of clothing for the foot and lower part of the leg; a stocking.

2. a garment for the legs and thighs, as tights or breeches, formerly worn by men..." 'Hosiery'-1. hose or stockings of any kind. 2, the business of a hosier.

III. Oxford Advanced Learners' Dictionary of Current English -1974 (Page 420) 2. Close fitting garment from the waist to the knees or feet worn by men in former times, tights...

'Hose' -a covering for the legs or feet; stockings, socks (half-hose); close fitting breeches or drawers...

These dictionary meanings have seal of approval, from a Division Bench of Gujarat High Court, in case of Darshan Hosiery Works (supra) where the term 'hosiery' has been explained to mean only : frame-knitted articles, of apparel, which can be used without the intervention of any tailoring process for supporting human body. This authority has reference to a number of other judicial interpretation of this term 'hosiery' where it has been held that the term 'hosiery' individually means 'knitted garments' or could be extended to mean 'machine-knitted garments'.

18. In this view of the matter, we are of our clear view that the expression 'hosiery' as used in this notification cannot be read to mean 'hosiery fabrics' or 'knitwear fabrics'. We, therefore, hold that the appellants are entitled to exemption from customs, as well as auxiliary duty, for the consignments of imports which are subject matter of these appeals.

19. We also find that the appellants, have to be treated to have satisfied all the conditions cited in the proviso of the aforesaid Notification, inasmuch as there was a duly issued import licence, which the appellants have established to have been duly endorsed in their favour by the STC and the value of the goods exported is indicated at the back of the licences. Three of the clearances of disputed consignments are beyond the pale of controversy because the endorsements were before the date of clearances. Some doubt could arise in relation to two consignments, in respect of which the endorsements were obtained after the clearances. We, however, find force in the contention of the learned counsel of the appellants that what is material is that the appellants should have satisfied all the conditions at the time, the refund claims were filed. We do not find any such apparent or hidden meaning in the wording of Section 27 of the Customs Act, whereunder the refund claims could be held to be restricted to or relate to only such orders, as were based on error or misconstruction, etc. Had any such restriction been built in the section, conferring right of claiming refund on the parties, then it could be urged that since there was no error committed, at the time the duty was assessed and levied, because at the time of clearances, the requisite condition of having endorsement from the concerned authority was not there, and so the refund claim could not be entertained. But the provisions pertaining to refund, as they read plainly, do not place any such restrictive meaning, and party's right to claim refund, subject to time limit, is not circumscribed by any restrictions, such as were reliable to errors, etc.; the assessees are entitled to claim refund, in terms of exemption or concessional notifications, and in case any conditions are imposed for entitlement to exemption, if they are substantially satisfied in the sense, that at the time that the refund claim was lodged, the party shows to have met with all the requirements, as contemplated by the relevant notification, then the refund could not be declined.

20. As a result, we find that the refund claims were rejected on erroneous view, and we accordingly set aside the order of the Appellate Collector, relating to all the five appeals, except for modification in the case of Stretchlon (Pvt.) Ltd., in relation to the amount of the refund which shall stand reduced in their case to Rs. 2,12,545/-. We, therefore, accordingly allow all the five appeals, subject to this modification, with consequential relief, by way of refund to the appellants.