

**Collector of Customs Vs. Birla Jute Industries Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jan-14-1992

**Reported in :** (1992)(61)ELT100TriDel

**Appellant :** Collector of Customs

**Respondent :** Birla Jute Industries Ltd.

**Judgement :**

1. These are Revenue appeals against the orders of the Collector of Customs (Appeals), Calcutta who has set aside the Assistant Collector's order-in-original confirming demands raised under Section 28(1) of the Customs Act, 1962.

2. The facts of the case are that the respondents filed ten bills of entry of various dates for clearance of-Polyester Staple fibre. The goods were assessed and bills of entry were released. After clearance of the consignments and within the statutory time limit of six months, the department discovered that cess duty of 0.05% on landing cost of the goods leviable under Section 5A of the Textile Committee (Amendment) Act, 1963 and Cess Rules, 1975, had not been collected and hence demand notices were issued calling upon them for making the payment of respective amounts under each consignment. The said demands came to be confirmed by the Asstt. Collector by separate orders.

3. The respondents appealed to the Collector (Appeals), Calcutta who has upheld the contention that the cess is not leviable on imported goods under the Textile Committee Act. He has held as follows - "Cess on such goods is leviable under the

provisions of the Textile Committee (Amendment) Act, 1963 and Cess Rules, 1975. The Section 5A of the said Act authorises imposition of cess on textile and textile machinery manufactured in India and it is also further laid down that the manufacturer shall pay the committee the amount of duty of excise levied under sub-section (1) within one month from the date on which he receives a notice of demand therefor from the Committee.

The mechanism for collection of such cess has been laid down in the rules framed under Section 22 of the said Act under the name and style "The Textile Committee (Cess) Rules, 1975 read with Notification No. 55018 (35)/75-Tex (III)/CTEG dt. 1-6-1977 published in part II, Section 3, sub-section (ii) of the Gazette of India Extraordinary dated 1-6-1977 and in that cess is leviable and payable to Textile Committee.

In view of the above, no cess is leviable on the imported goods under the Textile Committee Act. Accordingly, I set aside the order of the Asstt. Collector. The appeal is allowed".

4. The Revenue has contended in this appeal that cess duty of 0.05% is leviable on the imported goods as specified in the Textile Committee (Amendment) Act, 1963 read with Notification No. 55018 (35)/75-Tex (III) CTEG. dt. 1-6-1977. The Revenue contend that this notification declares it to charge the cess at the said rate as duty of excise and in terms of Section 3(1) of Customs Tariff Act, 1975 which empowers for the levy of addl. duty equal to excise duty. In this view of the matter, the Revenue is seeking to set aside the impugned order and confirm the demands made in the order-in-original.

5. Shri J.N. Nair, learned DR for the Revenue and Dr. Gowri Shanker, learned Senior Counsel for the respondents were heard by the Bench.

Shri Nair DR contended that the order of the Collector (Appeals) requires to be set aside as the demand raised in the show cause notice was legal and justified. On the imported goods, CV duty is recoverable and the finding of the learned Collector (Appeals) is to the contrary was not justified. He contended that CV duty has to be collected as duty of excise under Section 3 of the Indian Customs Act.

He contended that this levy is addl. duty of customs and not duty of excise or cess for indigenous production. He relied on the ruling of the Hon'ble Supreme Court as rendered in the case of Khandelwal Metal & Engg. Works & Anr. v. Union of India and Ors.

6. Dr. Gowri Shankar, learned Senior Counsel contended that the pith and substance of the Textile cess not to collect as duty of excise, as could be gathered from the object structure, scheme and provision of the Textile Committee (Amendment) Act, 1963. He pointed out that this legislation is self-contained with its own administrative recovery machinery and a separate provision for recovery and adjudication proceedings before its own Tribunal, under the Commerce Ministry. He contended that it is the Textile Committee alone which is competent to recover the cess for the purpose other than the purpose for which excise duty or CVD is collected. He contended that cess is different from duty. While duty is on production of goods, the cess collected under this legislation is meant for a different purpose. It is a special administrative cess as disclosed by object of the legislation and it goes to a separate fund and hence this cess cannot be equated to addl. excise duty. He contended that it is not one of the cess contemplated as in Section 12 of the Customs Act and not duty of excise as contemplated under Section 3 of the Customs Tariff Act. As this legislation had its own separate machinery for collection of cess, the recovery and demand notice issued by the Excise and Customs authority is not valid. He pointed out that in other legislations like Automobile Cess Act, Beedi Workers Welfare Cess Act, 1976, Jute Cess Act, the Collector of Customs had been specifically empowered to collect the cess as duty of excise; however the Act in question did not empower the Excise and Customs officials to recover the cess as Section 5A of this Act had vested the power of collection to the Textile Committee under the Commerce Ministry to levy and collect the cess. He contended that nomenclature of the term "Cess" did not matter much but it is the pith and substance of the legislation which has to be worked into.

7. He relied, on the ruling of the Supreme Court rendered in the case of India Cement Ltd. v. State of Tamil Nadu and Ors. [1990 (1) SCC page 12] and that of Shinde Brothers v. Deputy Commissioner, Raichur and Ors.

8. Shri Nair, learned DR contended that the recovery of cess is for addl. duty of customs and it is not a recovery of Excise duty or Customs duty. The collection of cess by Textile Committee has no relevance for collection of additional duty of customs under Section 4 of the Act. He contended that Section 12 of the Customs Act is not important but under Section 3 of the Customs Act, the collection of additional duty of customs is legal on account of the goods being imported ones.

9. We have carefully considered the submissions made by both the sides and have perused the records. The main question that arises for our consideration is as to whether the department is entitled to collect the cess of 0.05% under Section 5A of the Textile Committee Act, 1963 and the rules made thereunder read with the cited notification? The Section 2 and 5A of the Textile Committee Act, 1963 reads as under - (f) Textile machinery means the equipment employed directly or indirectly for the processing of textile fibre into yarn and for the manufacture of fabrics therefrom by weaving or knitting and includes equipment used either wholly or partly for the finishing, folding or packing of textiles.

(g) Textiles means any fabrics or cloth or yarn or garments or any other articles made wholly or in part of -(1) cotton; or (fibre means man-made fibre in-(ii) wool; or eluding regenerated cellulose(iii) silk; or rayons, nylon and the like).(iv) artificial silk or other fibre including fibre 5 A. - Imposition of cess on textiles and textile machinery manufactured in India.

- (1) There shall be levied and collected as a cess for the purpose of this Act a duty of excise on all textiles and on old textile machinery manufactured in India at such rate not exceeding one per cent ad valorem as the Central Govt. may by notification in the official Gazette fix provided that no such cess shall be levied on textiles manufactured from out of handloom or power loom industry.

(2) The duty of excise levied under sub-section (1) shall be in addition to any cess or duty leviable on textiles or textile machinery under any other law for the time being in force.

(3) The duty of excise levied under sub-section (1) shall be collected by the Committee in accordance with the rules made in this behalf, from every

manufacturer of textiles or textile machinery (hereafter in this section and in section 5C and 5D referred to as the manufacturer).

(4) The manufacturer shall pay to the Committee the amount of the duty of excise levied under sub-section (1) within one month from the date on which he receives a notice of demand therefor from the Committee".

The Notification No. F. 55018 (35) Tex (CTEG) dated 1-6-1977 is also reproduced below - "In exercise of the powers conferred by sub-section (1) of section 5A of the Textiles Committee Act, 1963 (41 of 1963) and in supersession of the notification of the Govt. of India in the Ministry of Commerce No. F7(ii)/74 Tex(III) dated the 25th February 1975 the Central Govt. hereby fixes with immediate effect, 0.050% adv. as the rate at which the duty of excise shall be levied and collected as a cess for the purposes of the said Act, on all textiles and on all textile machinery manufactured in India, except the textiles manufactured from out of handloom or powerloom industry.

10. We have carefully considered the submissions made by both the sides and perused the records. The question that arises for our consideration is as to whether the cess @ 0.05% can be levied as C.V. duty under Section 3(1) of Customs Tariff Act, 1975 which is equivalent to the cess levied as per the provisions of Textile Committee Act, 1963. The Asstt. Collector had issued demand notice under Section 28(1) of the Customs Act, 1962 for Customs duty total amounting to Rs. 7,947.88 in respect of ten bills of entry of various dates and passed separate four orders-in-original dated 23-12-1987, 1-12-1987, 19-1-1988 and 1-2-1988.

The said demands have been passed in the routine manner on a printed format which reads that - "A demand notice under Section 28(1) of the Customs Act, 1962 for customs duty amounting to Rs. 2,249/-. (Rupees two thousand two hundreds forty-nine only) which was short levied in respect of the consignment was issued on M/s. Birla Jute & Industries Ltd. in this office letter of even No. dated 15-1-1987.

The importers have made no representation against the demand. Cess @ 0.05% L/L is leviable as per CTA No. 187 F/o dt. 16-2-1986 DL 1010 S/I Rs. 1846.98 DL

1009 S/I Rs. 402.02 The demand is in order and is accordingly confirmed under Section 28(2) of the Customs Act, 1962. The extra duty should be paid forthwith failing which the amount will be recovered in the manner laid down in sub-section (1) of the Section 142 of the Customs Act, 1962 without any further reference.

Appeal against this order lies to the Appellate Collector of Customs within three months hereof, The importers desirous of appeal against decision shall pending the appeal, deposit the amount of extra demand".

The figures and details have been filled by hand in ink. Therefore, it can be safely presumed that the printed format for recovery of customs duty has been used for the purpose of demanding CV duty which is equivalent to the cess chargeable under the Textile Committee (Amendment) Act. The learned Collector has also not proceeded on this line and decided the matter with an understanding that the demands raised are for cess and not for CV duty under Customs Act. However, in the grounds of appeal, the Revenue have contended that cess is leviable and payable to the Textile Committee. However, they contended that Notification No. 55018/(35)/75Tex (III) CTEG dt. 1-6-1977 fixes cess @ 0.05% ad valorem and declares it to be charged as duty of excise and in terms of Section 3(1) of the Customs Tariff Act, 1975, which empowers for the levy of addl. duty equal to excise duty. The Section 3(1) of the Customs Tariff Act, 1975 is reproduced below - "Any article which is imported into India shall in addition, be liable to a duty (hereinafter in, this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article, if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article".

Hence, the Revenue is contending that cess duty at the rate of 0.05% is leviable on all imported goods as specified in the Textile Committee (Amendment) Act, 1963 read with the notification mentioned above.

11. The contention of the Revenue is well-founded. There cannot be two opinions that CV duty has to be levied on imported items as per Section 3(1) of Customs Tariff Act, 1975. The rate of levy has to be equal to the excise duty for the time

being leviable on a like article, if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value. In this case the imported item is Textile machinery. The import of it is regulated by Textile Committee under the Textile Committee (Amendment) Act, 1963.

This legislation authorises collection of cess also and the Textile Committee is empowered to collect and it has its recovery machinery.

The Revenue in these appeals are not disputing this aspect of the matter. It is the Revenue's contention that the rate of excise is 0.05% as fixed in this legislation and this rate is also to be recovered as CV duty under the Customs Tariff Act. This is correct proposition and has to be accepted. We are not adjudicating the levy of cess under the notification or the Textile Committee (Amendment) Act, 1963. But the rate of cess under this legislation has been accepted by Revenue for levy of CV duty under Section 3 of the Customs Tariff Act, 1975 which we are confirming.

12. Dr. Gowri Shanker, learned Sr. Advocate has only contended that cess levied under the Textile Committee (Amendment) Act has to be collected by the Textile Committee and the legislation has its own machinery. There can be no two opinions on this aspect of the matter.

Dr. Gowri Shanker has not shown to us that no C V duty is leviable under Section 3 of the Customs Tariff Act. Therefore, there is no need to go into the aspect of the argument of pith and substance of the legislation raised by him, the citations relied on by him do have direct bearing on the facts and issue in the present case. We are of the considered opinion that the short levy demanded has been raised in respect of CV duty under Section 3 of Customs Tariff Act and not cess under the Textile Committee (Amendment) Act, 1963 which is separately leviable by Textile Committee under the provision of that Act. In these proceedings, we are concerned with the levy of CV duty only.

13. In view of our findings, the Revenue succeed in these appeals and the same are allowed. We confirm the demands raised in the orders-in-original.

14. [Assent per: N.K. Bajpai, Member (T)]. -I have studied the order written by learned brother Shri S.L. Peeran and, while agreeing with him, would like to add a few sentences.

15. By notification dated 1st June, 1977, issued under Section 5A of the Textile Committee Act, 1963, the Central Government has fixed the rate at which the duty of excise is to be levied and collected as a cess on all textiles and all textile machinery manufactured in India.

It is the case of the Revenue that in terms of Section 3(1) of the Customs Tariff Act, 1975, all imported articles are liable to duty equal to the excise duty leviable on a like article, if produced or manufactured in India, and that this duty is in addition to the customs duty. This being so the excise duty which is leviable as cess under the Textile Committee Act also becomes leviable as additional duty on imported goods.

16. While Dr. Gowri Shankar's contention is that under the Textile Committee Act there is distinctly separate machinery for collection of the cess, there is no provision in that law for its collection by the Customs and Central Excise authorities. While what he says is true so far as collection of this cess on goods manufactured in India is concerned, the position is different in the case of goods imported into India. The authority for collecting the cess as a duty of excise in the case of imported goods, is not derived only from the Textile Committee Act but also from Section 3(1) of the Customs Tariff Act which provides for liability to duty (as additional duty) equal to excise duty for the time being leviable on a like article, if produced or manufactured in India. In other words, the basis for the charge, in the case of imported goods, arises from Section 3(1) of the Customs Tariff Act. It is only for ascertaining whether any duty of excise is leviable on like article produced or manufactured in India that one has to refer to the law or laws which provide for such a levy that the Textile Committee Act has to be looked into to determine the quantum of such levy. In these circumstances, the mechanism for collection of the duty under the Textile Committee Act for the goods manufactured in India, is not at all relevant in the case of imported goods. Thus, the contention of Dr.

Gowri Shankar fails in the case of imported goods.

17. I agree with learned brother Shri S.L. Peeran that the department's appeal, succeeds and is therefore, allowed.

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