Navsari Cotton and Silk Mills Ltd. Vs. Union of India

Navsari Cotton and Silk Mills Ltd. Vs. Union of India

SooperKanoon Citation : sooperkanoon.com/736060

Court : Gujarat

Decided On : Mar-25-1991

Reported in : 1992(60)ELT110(Guj)

Judge : A.P. Ravani and; J.N. Bhatt, JJ.

Acts : Central Excise Rules, 1944 - Rule 9; Central Excise Act, 1944 - Sections 11A

Appeal No. : Special Civil Application No. 2840 of 1983

Appellant : Navsari Cotton and Silk Mills Ltd.

Respondent : Union of India

Advocate for Def. : B.B. Naik, Adv.

Advocate for Pet/Ap. : S.I. Nanavati, Adv.

Judgement :

Ravani, J.

1. Petitioner mill company has been served with a show cause notice dated May 24, 1983. The show cause notice has been issued on the ground that under T.I. No. 18E, in the case of non-cellulosic spun yarn, its manufacture is complete after it is sized. Thus the duty is chargeable on weight after sizing as required under

Rule 9 (as amended) of the Central Excise Rules, 1944 whereas the petitioner mill company has paid the duty on its unsized weight. Therefore, the differential duty is recoverable. As indicated in the show cause notice the differential duty is of an amount of Rs. 3,11,990.40 (Rupees three lacs eleven thousand nine hundred ninety and paise forty only). The period for which the duty is demanded is between August 4, 1976 to December 31, 1976, and notice is dated May 24, 1983.

2. As regards the aforesaid factual position there is no dispute. Therefore the question is - 'whether the notice can be said to be within the prescribed period of limitation as provided under Section 11A of the Act Even if it is considered that the proviso to Section 11A is applicable, the notice is issued beyond the period of five years. Therefore, either way the notice is beyond the period of limitation. The petitioners have challenged the legality and validity of the notice and have prayed for a declaration that the excise duty in respect of cellulosic spun yarn and non-cellulosic spun yarn falling under Tariff Item No. 18III(ii) and 18E should be levied and collected on the weight of the unsized yarn at the spindle stage and not on the basis of the weight of the sized yarn.

3. As far as the show cause notice is concerned, it is required to be quashed and set aside on the short ground that it is barred by the prescribed period limitation.

4. As far as the prayer for declaration about the collection of duty on the weight of the unsized at the spindle stage is concerned, it is stated at the bar that the said question is concluded by the decision of Supreme Court in the case of M/s. J.K. Cotton Spg. & Wvg. Mills Ltd. v. Union of India, reported in AIR 1988 SC 191 - 1987 (32) E.L.T. 234 (SC). Since the department has also accepted this position, the petitioners do not press this prayer.

5. In the result, the petition is partly allowed. The show cause notice dated May 24, 1983, Annexure 'C' to the petition, is quashed and set aside. Rule made absolute to the aforesaid extent only with no order as to costs.