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NitIn Spinners Limited Vs. Cestat

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Court : Rajasthan

Decided On : Nov-08-2005

Reported in : 2006(198)ELT490(Raj)

Judge : Rajesh Balia and; R.P. Vyas, JJ.

Acts : Central Excise Tariff Act, 1985; Central Excise Act, 1944 - Sections 3 and 5A; Central Excise Rules, 1944 - Rules 173Q, 192 and 196; Central Excise Rules, 2001 - Rule 25; Additional Duties of Excise (Goods of special Importance) Act, 1957 - Sections 3(1)

Appeal No. : D.B. Other Tax Reference No. 4 of 2005

Appellant : NitIn Spinners Limited

Respondent : Cestat

Advocate for Def. : V.K. Mathur, Adv.

Advocate for Pet/Ap. : Dinesh Mehta, Adv.

Disposition : Appeal allowed

Judgement :
ORDER

1. This appeal is directed against the order of Customs, Excise and service Tax Appellate Tribunal, New Delhi dtd. 30-10-2003. The appellant is 100% export

oriented unit engaged in the manufacture of cotton yarn and polyester yarn falling under Chapter 52 and 55 respectively of the schedule-I of the Central Excise Tariff Act, 1985. It has brought in the factory aluminum sheets and fiber glass for the purpose of its use and has actually been used in laying false ceiling and humidification plant.

2. According to the assessee, it has used fiber glass and aluminum sheets for providing false ceiling in humidification plant to obtain better efficiency of the plant. He, therefore, procured the aforesaid goods without payment of Duty relying on the notification No. 1/95 C.E., dated 4-1-1995 by issuing CT-3 certificate.

3. The Assistant Commissioner of Central Excise issued show cause notices dtd. 5-9-2001 calling upon the assessee to show cause against the proposed levy of Excise Duty on the aforesaid goods, which according to the assessing officer was leviable and did not fall within the provisions of Exemption Notification No. 1/95 issued under Section 5A of the Central Excise Act, 1944 and proposed penalty under Rule 173Q of the Rules of 1994 read with Rule 25 of the Central Excise Rules, 2001 for contravention of the provisions of Rule 192 of the Rules of 1994 read with Notification No. 1/95-C.E.

4. The assessee replied by stating that item in question are part of humidification system and covered under the category of capita! goods and hence exemption from Duty for user of aforesaid items for humidification system cannot be denied merely because there is no specific mention of fiber glass and aluminum sheets in the Notification (Annex. 1).

5. The assessing officer disagreed with the submissions made by the assessee and opined that since false celling is civil construction, user of fiber glass and aluminum sheets In the aforesaid construction does not qualify for exemption under the aforesaid notification and consequently vide order dtd. 30-3-2002, the demand for central excise duty amounting to Rs. 1,80,292/- was raised and order of recovery under the provisions of Central Excise Rules and Central Excise Act was issued. Penalty of Rs. 50,000/- was also imposed under Rule 173Q of the Rules of 1994.

6. For the very same reason, the successive appeals preferred by the assessee before the Commissioner (Appeals), Customs and Central Excise and the Customs, Excise and Gold (Control), Appellate Tribunal, New Delhi failed as they agreed with the reason that prevailed with the assessing officer about the non-applicability of exemption notification on the goods In question. Hence, this appeal.

7. In this appeal following substantial questions of law were framed :

1. Whether in the facts and circumstances, in view of the finding recorded by the Tribunal that the false ceiling is provided in location where humidification plant is operational so as to ensure that the efficiency of the plant is achieved and that it is a work of redesigning besides where the plant can work with efficiency, the end conclusion of the Tribunal that fiber glass and aluminum sheets used in establishing the humidification plant were not capital goods in respect of which the appellant could avail the benefit of purchasing such material without payment of duty?

2. Whether in the facts and circumstances of the case, the authorities were legally justified in upholding the penalty under Section 173Q of the Central Excise Rules, 1944 for the alleged violation of the Rule 196 of the Rules.

8. The learned Counsel for the assessee as well as the learned Counsel for the Revenue have submitted the respective arguments in support of their respective contention as before the Excise Authorities.

9. It will be apposite first of all to notice exemption Notification dated 4-1-1995 and consider scope of exemption thereunder on which both the learned Counsel have placed reliance.

The relevant part of the notification provides that

Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods, specified in Annexure I to this notification (hereinafter referred to as the said goods), when brought in connection with -

(a) the manufacture and packaging of articles, or for production or packaging or job work for export of goods or services out of India into hundred per cent, export oriented undertaking (hereinafter referred to as user industry; or

(b)...

(c)...

from the whole of

(i) the duty of excise leviable thereon under Section 3 of the Central Excise Act, 1944 and

(ii) the additional duty of excise leviable thereon under Sub-section (1) of Section 3 of the Additional Duties of Excise (Goods of special Importance) Act, 1957.

Subject to the following conditions, namely,

(a)...

(i)...

(ii)...

(iii)...

(b) the user industry brings the excisable goods directly from the factory of manufacture or from the warehouse and uses them for purposes as specified in Clauses (a) to (c) above solely for export;

(c)...

(d) the user industry executes a bond with the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise (hereinafter referred to as Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise in the prescribed form and for such sum as may be specified by that Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise for the purpose of accountal of the receipt, storage and utilization of such

goods and to fulfil the export obligations and to comply with the conditions stipulated in this notification and the Export and Import Policy, and binding itself to pay on demand an amount equal to the duty leviable on the goods and interest at the rate of fifteen per cent per annum on the said duty from the date of duty free procurement of said goods till the date of payment of such duty, if -

(i) ...

(ii) ...

(iii) ...

(a)...

(b)...

(iv) ...

10. The first entry in Annexure I relates to 'capital goods and spares and accessories thereof'.

11. The capital goods for the purpose of notification has not been separately defined nor any definition has been provided under the Act of 1944 and therefore, the term 'capital goods' has to be construed to mean in its ordinary sense. However, one thing is clear that there being no specification of goods to be included in the capital goods, the word 'Capital goods' is of generic character and will include all the goods depending upon its user whether they are being used as part of end product by way of input or, are used other way otherwise to facilitate the manufacture of product with some sort of permanency or continued user of said goods. Therefore, whether the goods which have been brought in by 100% export oriented undertaking are capital goods or not would not depend on whether such goods have been specified separately in Annexure -I or, not, but would depend upon what use they have been put in. The notification also lays down conditions of do's and don't and also requires assessee to execute a bond in terms of Clause (d).

12. The condition appended to the notification requires that the user industry executes a bond with the concerned authority in the prescribed pro-forma and for such sum as may be specified by that authority for the proper accounting of the receipt, storage and utilization of such goods and to fulfil the export obligations and to comply with the conditions stipulated in the said notification and the Export and Import Policy and binds itself to pay on demand an amount equal to the Duty leviable on the goods and interest at the rate of fifteen per cent annum on the said Duty from the date of Duty free procurement of the said goods till the date of payment of such Duty. Failure to fulfill such condition entails consequence of, levy of Duty with interest in the case of capital goods, if such goods are not proved to the satisfaction of the Assistant Commissioner of Customs or Central Excise to have been installed or otherwise used within the boundary premises within a period of one year from the date of procurement thereof or within such extended period not exceeding five years as the competent authority may, on being satisfied that there is sufficient cause for not using them as above within the said period, allow. The proposition put forth by the Revenue that capital goods must be used only as movable goods or as accessories of machines used for manufacture for the purpose of availing the benefit of exemption under the exemption Notification is also ruled out. It is clearly postulating that they become either part of any installation or are used otherwise to fulfill condition of exemption notification. Procurement of such capital goods without payment of Duty cannot be set at naught by calling to pay duty on those goods inter alia on the ground that since capital goods have become part of installation, they have ceased to be capital goods and cannot be considered as capital goods.

13. The condition for availing the exemption for purchasing the capital goods is not to be used in manufacture of goods, but is of wider impact by using the expression to be used in connection with manufacture of end-product by 100% export oriented undertaking for the purpose of export outside India. It is of much wider canvass. Therefore, if there is connectivity between bringing in of capital goods with the activity of manufacture of end product or its packaging in the sense that it helps in smooth or efficient running of activity of manufacture and packaging of end product, the condition to avail the exemption must be considered to have been fulfilled and the assessee is entitled to avail the benefit of exemption.

14. We are not concerned with other conditions provided in the notification as no such breach of any other condition have been pointed out by the assessing officer in its show cause notice.

15. If we examine in light of the aforesaid analysis of the notification, we find that the facts which are not in dispute are that the assessee has purchased the goods in question and brought in user undertaking which is 100% export oriented unit. As per show cause notices, it is also not in dispute that the purchased articles in question have been installed in providing false ceiling of humidification plant which is essential part of manufacturing process of cotton yarn and polyester yarn. It is also not in dispute that the assessee has used fiber glass and aluminum sheets for providing false ceiling in humidification plant to obtain better efficiency of the plant which results in qualitative production of end product. On such undisputed premises, the conclusion is irresistible that fibre glass and aluminium sheets in question have been used by the assessee, which is 100% export oriented undertaking, in connection with manufacture of goods and if that is so, the condition of Exemption Notification stands fulfilled. The exemption Notification provides that capital goods brought in 100% export oriented undertaking are to be used in connection with manufacture of goods and It Is not the condition that such capital goods should be used in manufacture of goods directly. That satisfies the basic condition of exemption notification. Therefore, levy of excise duty and consequent recovery of penalty under Rule 173Q cannot be sustained, for the reasons stated in the impugned notices and orders.

16. As a result, the appeal is allowed. The order of learned Customs, Excise and Service Tax Appellate Tribunal as well as of the Commissioner and the assessing authority are set aside and the show cause notices are discharged.

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