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Eastern International Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-07-1994

Reported in : (1994)(74)ELT609TriDel

Appellant : Eastern International

Respondent : Collector of C. Excise

Judgement :

1. The above appeal arises out of the order of Additional Collector and Customs of Central Excise, Chandigarh. The brief facts of the case are that on 11-10-1984, the Central Excise staff, Ludhiana, visited the factory premises of the appellants herein and found the factory engaged in the manufacture of woollen knitted hosiery cloth in tubular form from woollen yarn with circular knitting machines. The Excise Officers also found some woollen yarn and woollen jerseys in semi-finished condition. On visual examination, the woollen yarn appeared to be containing more than one sixth by weight of nylon contents, classifiable under Tariff Item 18-B(ii). Sh. Jagdish Rai, proprietor of the factory, stated that the yarn was a blended yarn but he did not know its composition. He was not able to produce any bill/ voucher or Central Excise gate pass covering the yam in question. The woollen yarn/woollen jerseys in semi-finished condition and woollen knitted hosiery cloth were seized in the reasonable belief that the yarn was of non-duty paid character and liable to confiscation under Rule 173Q of the Central Excise Rules, 1944. A note book was also recovered from the factory premises and the entries therein appeared to relate to woollen tops received/procured by the appellants and used

further in the manufacture of woollen spun yarn. Sh Jagdish Rai was unable to explain the entries in the Hand book and he stated that he did not know who had made the entries therein.

2. A representative sample of the yarn was sent for chemical examination and reported to be three ply spun yarn composed of 68.7% wool, 30.9% man-made fibre of non-cellulosic origin (nylon) and 0.4% polyester. As the yarn contained more than l/6th by weight of nylon, it was held to be classifiable under Tariff Item 18-B(ii).

3. A show cause notice was issued to the appellants proposing confiscation of the seized goods, levy on the goods under seizure and imposition of penalty. The appellants replied thereto, contending inter alia that the liability to pay duty on the goods does not arise as the appellants are not admittedly manufacturers of the yarn and that penal action cannot be initiated against the appellants for the same reason.

The liability of the goods to confiscation was also disputed by the appellants.

4. The adjudicating authority held the appellants guilty of connivance with the manufacturers of the yarn in question and therefore, confiscated the goods, and however, since the goods had been released provisionally before adjudication, he appropriated bond amount of Rs. 20,000/- towards redemption fine. In addition, he confirmed a duty demand of Rs. 15,705/- and Rs. 1,48,079.25 P and imposed a personal penalty of Rs. 20,000/-. Hence this appeal.

5. We have heard Shri Mohinderjeet Singh, learned Advocate and Shri M.M. Mathur, learned JCDR. Shri Mathur fairly concedes that duty liability on the seized goods cannot be fastened upon the appellants who are admittedly not manufacturers of the yarn and that penalty, for the same reason, cannot be imposed in terms of the relevant rules upon the appellants. He however, contends that Rule 173-Q is attracted to the facts of the case as the appellants were not able to produce any bills/vouchers, Gate passes in respect of the blended woollen yarn and similar yarn used in the manufacture of the recovered goods nor, at any stage, did they produce any evidence of legal acquisition or disclose the names of

the suppliers/manufacturers of the yarn. This would mean that the appellants were indulging in mal-practices and they were conniving with the yarn manufacturers to evade excise duty. He, therefore, supports the confiscation of the seized goods.

6. We agree with the learned JCDR that Rule 9(2) is not applicable in this case as in terms of that Rule, the producer or manufacturer is liable to pay duty on excisable goods deposited in or removed from any place specified, in contravention of Rule 9(1). The penalty also cannot be sustained as Rule 173-Q stipulates that a manufacturer/producer or a licensee of a warehouse is liable to penalty for removal of excisable goods in contravention of the rules, a non-accountal of excisable goods etc. and does not provide for imposition of penalty on a purchaser of goods in respect of which a manufacturer or producer or licensee of a warehouse may have committed an offence. Therefore, what remains for decision in this appeal is the liability of the goods to confiscation.

We are of the view that under Rule 173-Q, the goods are liable to confiscation as the "liability attaches to the goods on which duty has not been paid by a manufacturer/producer/warehouse licensee. The goods become tainted due to non-payment of duty at the time of removal from the factory and once the department has been able to establish that the goods were cleared without payment of duty, the liability to confiscation arises (See Final Order No. 691/94-NRB, dated 27-7-1994 in the case of Universal Cables Ltd. v. C.C.E. Meerut).

7. The judgment of the Hon'ble Supreme Court in the case of C.C.E. v.Decent Dyeing Co. 1990 (45) E.L.T. 201 relied upon by the learned Counsel does not advance the case of the appellants on this issue, as the Court was not seized of the first question of liability of goods seized from job workers to confiscation on the ground of removal of acrylic yarn manufactured without payment of duty and was only determining duty liability of buyer/job worker. The Supreme Court held that the liability of payment of excise duty is on the manufacturers and not upon purchaser and hence dismissed the appeal of the Revenue.

8. In the light of the above discussion, we set aside the demand of duty and the penalty but uphold the confiscation of the seized goods with option to redeem. The appeal is disposed of in the above terms.

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