

Kushal Textiles Processing Mills Vs. Collector of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-18-1994

Reported in : (1994)(74)ELT854TriDel

Appellant : Kushal Textiles Processing Mills

Respondent : Collector of C. Excise

Judgement :

1. This is an appeal against the order dated 19-12-1985 passed by the Additional Collector of Central Excise, Jaipur. Briefly stated the facts of the case are that on 6-2-1983 the Central Excise Preventive Party, Jodhpur intercepted a consignment of bleached fabrics in the city which was not accompanied by any Central Excise document. The scrutiny of the records of the appellants' factory revealed that more than 15000 sq. meters of bleached cotton fabrics were cleared from the factory on 25-12-1982 against Gate Pass Slip Nos. 7419 and 7429, dated 25-12-1982. On the grounds that the appellants were not entitled to the exemption under Notification No. 130/82, dated 20-4-1982 in respect of processed cotton fabrics, the Central Excise officers seized the 8185.25 meters of bleached cotton fabrics detained during the preventive checks. They also seized another quantity of 21278 meters of cotton fabrics found in the appellants' factory. After further investigations, the appellants were served with a show cause notice requiring them to show cause as to why duty amounting to Rs. 90,415.21 should not be recovered on quantity of processed cotton fabrics cleared by them during the period 20-4-1982 to 25-12-1982. The show cause notice also required the

appellants to explain why the seized cotton fabrics measuring 29643.25 meters should not be confiscated and penalty not be imposed on them. During the proceedings before the adjudicating authority, the appellants denied the allegations in the show cause notice and claimed that they were not liable to pay duty since they were eligible for exemption under Notification No. 130/82, dated 20-4-1982 as amended by Notification No. 194/82, dated 18-6-1982. They stated that on 25-12-1982 they had not cleared more than 15000 sq.

meters of bleached cotton fabrics as alleged by the Department since the quantity of bleached cotton fabrics on that day was only 8384.21 sq. meters and the remaining quantity comprised of dyed fabrics which were not subjected to the process of bleaching. They also claimed that their total clearances of processed cotton fabrics during the year 1981-82 being 31,71,537.39 sq. meters, they had not exceeded the maximum quantity of 36 Lakh sq. meters relating to annual clearance for home consumption specified by the amending Notification No. 194/82, dated 18-6-1982. On these grounds it was contended that the seizure of 2,94,643 sq. meters of cotton fabrics was not justified. However, the Additional Collector rejected the appellants' contention that their clearances of bleached cotton fabrics on 25-12-1982 had to be worked out by excluding the clearances of dyed fabrics from the total clearances on that day on the grounds that the appellants were engaged in bleaching, dyeing and printing of cotton fabrics and not exclusively in dyeing of such fabrics. The Additional Collector also held that the goods in question were not eligible for the exemption under the relevant notifications since they were also using 'kier' machine for the purpose of bleaching cotton fabrics.

2. On behalf of the appellants Shri Fallow Shishodia, Learned Advocate appeared before us. He submitted that the Additional Collector had erred in arriving at the finding that on 25-12-1982 the appellants had cleared more than 15,000 sq. meters of bleached cotton fabrics. He contended that on 25-12-1982 the appellants had cleared only 8384.21 sq. meters of bleached cotton fabrics and 12,576.33 sq. meters of dyed fabrics and as such they had not exceeded the upper limit of 15,000 sq.

meter in respect of clearances on any particular day as laid down in Notification No. 130/82, dated 20-4-1982 as amended by Notification No.194/82, dated 18-6-1982. He argued that the Additional Collector's finding that the clearance of 31,71,537.39 sq. meters of bleached cotton fabrics during the year 1981-82 was in excess of the limit prescribed in the relevant notification was also erroneous since in terms of the amending Notification No. 194/82, dated 18-6-1982, the limit in respect of annual clearances of bleached fabrics was enhanced to 36 lakh sq. meters. He added that the appellants were using only some large sized vessels in connection with their bleaching operations which could not be deemed as 'kiers' as held by the Additional Collector. He contended that 'kiers' are sophisticated machines which are used only by large cotton mills. In support of his contention he pleaded that the note prepared by Shri R.M. Mittal, Research Associate, Ahmedabad Textile Industry's Research Association, filed along with his letter dated 30th September, 1994 may be taken into account.

3. On behalf of the respondents Shri R.K. Kapoor, Learned SDR stated that the appellants claim that on 25-12-1982 they had not cleared bleached cotton fabrics in excess of 15000 sq. meters has to be rejected since in his statement dated 6-2-1983, Shri Puran Raj Abbani, a partner of the firm had admitted that on 25-12-1982 they had cleared 17925 sq. meter of bleached cotton fabrics. He added that the appellants claim that they were not using 'kiers' for their bleaching operations has also to be rejected since the Additional Collector's finding in this regard was based on the appellants' own admission that the Vessels' which they were using were known as 'kiers'. He pleaded that the note of one Shri R.M. Mittal of Ahmedabad Textile Industries Research Association filed by the Advocate with his letter dated 30th September, 1994 may not be taken into account since the appellants had not been permitted to file any fresh evidence. He conceded that in view of the amendment of Notification No. 130/82 by Notification No. 194/82, the limit in respect of clearances of bleached cotton fabrics during the preceding financial year had been raised to 36 lakh sq. meters.

4. We have examined the records of the case and considered the sub-missions made on behalf of both sides. It is seen that the Additional Collector's finding that during the relevant period the appellants were not entitled to the benefit of the

exemption in respect of precessed cotton fabrics in terms of Notification No. 130/82 as amended by Notification No. 194/82 was based on the following considerations : - (i) The condition requiring that maximum quantity of bleached cotton fabrics permitted to be cleared on any day in the financial year shall not exceed 15000 square meters was not complied with since the clearances of such goods on 25-12-1982 were in excess of 15000 sq.

meters; (ii) The appellants had carried out bleaching operations with the aid of 'kier' machines.

5. It is seen that Notification No. 130/82-C.E., dated 20-4-1982 exempted cotton fabrics falling under sub-item I of Item No. 19 of the First Schedule to the Central Excises and Salt Act, 1944 processed without the aid of power or steam, from the whole of the duty of excise leviable thereon both under the Central Excises and Salt Act and the Additional Duties of Excise. However, the exemption was subject to the proviso to the Notification and the Explanation which were amended by Notification No. 194/82-C.E., dated 18-6-1982. The relevant extract from the amending notification is reproduced below

Amendment and Date	-----	"Sl. No.	Notification No.
3	-----	1	2
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...

...3.

130/82-Central In the said notification, for the Excise, dated the proviso, and Explanation, the fol- 20th April, 1982 lowing shall be substituted, namely :- 6. Learned Counsel for the appellants has contended that the Collector's finding that the appellants had crossed the limit of fifteen thousand sq. metres in respect of clearances on a particular day is erroneous since on 20-5-1982 they had cleared a total quantity of processed fabric measuring 20960.05 sq. meters, out of which dyed fabrics accounted for only 12576.33 sq. mt. and the remaining quantity of 8384 sq. metres comprised of dyed fabrics. In this regard, we are inclined to agree with the Additional Collector that as clarified in the Explanatory Memorandum to

Notification No. 194/82-C.E., dated 18-6-1982 only the process of dyeing of cotton fabrics was taken out of the purview of Notification No. 130/82 and accordingly only units engaged exclusively in the process of dyeing were exempted from payment of duty of excise. Hence the appellants who were engaged in the process of bleaching, dyeing and printing could not claim exemption in respect of processed fabric on the grounds that they were only subjected to the process of dyeing. It is seen that Shri Puran Raj Abbani, a partner of the firm, in his statement dated 6-2-1983 had admitted that a quantity of 17925 sq. meters of bleached cotton fabrics was cleared from the factory on 25-12-1982. It is also seen that the appellants claim that a quantity of 20960.05 square meters of processed cotton fabric cleared from the factory on 25-12-1982 comprised 12576.33 square meters of dyed fabrics and only the remaining 8384.72 sq. meters consisted of bleached cotton fabric is not supported by any evidence. Under these circumstances, we do not find any infirmity in the Collector's finding that on 25-12-1982 the total clearances of bleached cotton fabric from the appellants' factory were in excess of the limit of 15000 sq. meter as laid down in the proviso (a)(ii) of Notification No. 130/82, as amended by 194/82-C.E., dated 18-6-1982.

7. As regards the Collector's finding that the appellants were bleaching cotton fabrics with the aid of machine since they were carrying out 'kiering' operation, the appellants have contended that they were using a vessel which could not be called 'kier'. The Learned Counsel has submitted that 'kiering' is an operation which is carried out only in large Milk with the aid of sophisticated machines. In support of his contention he has filed a note prepared by one R.M.Mittal, Research Associate of Ahmedabad Textile Industry's Research Association. This note having been filed before us at the time of hearing cannot be taken into account since being in the nature of additional evidence which should have been filed with a proper application with the prayer for being allowed to plead additional evidence. It has been observed by the Additional Collector the appellants had admitted that large vessels being used by them for boiling water and cloth were locally known as 'kier'. Hence, on this account as well, as held in the impugned order, in terms of Explanation (i)(a) to the Notification 130/82, as amended, the appellants were not eligible for the benefit in terms of the said notification.

8. In view of the foregoing, we see no merit in the submissions made by the Learned Counsel on behalf of the appellants and accordingly the appeal is rejected.

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