

Menka Textiles Inds. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-11-1995

Reported in : (1996)(88)ELT370Tri(Mum.)bai

Appellant : Menka Textiles Inds.

Respondent : Collector of Central Excise

Judgement :

1. For hearing the applicants' appeals on merits, the firm is required to deposit a sum of Rs. 1,44,84,204/- towards duty and a penalty of Rs. 20 lakhs. An individual penalty of Rs. 20 lakhs has been imposed on the Managing Partner Shri Ramkumar Kapur. Their plant and machinery have been ordered confiscation but allowed redemption on payment of fine of Rs. 10 lakhs, (vide Order-in-Original No. 19 of 1995 dated 9-5-1995).

2. Shri Iyer, the Id. Advocate, appearing for the applicants, pleads that they are job workers bringing polyester filament yarn for texturising. They had a Central Excise Licence, which the Department advised to surrender, because the texturised yarn was exempted, if made out of duty-paid yarn. They were also getting imported POY under DEEC scheme and they were under the bona fide belief that they would be continued to be eligible for exemption under Notification No. 178/83 and clearing such texturised yarn made out of duty-paid yarn including yarn cleared under DEEC Licence. However, a show cause notice came to be issued on 17-5-1993 covering the period 24-12-1991 to 1-6-1992 alleging that the POY yarn is exempted from CVD and hence texturised yarn manufactured out of such

exempted base yarn is not eligible for exemption under Notification No. 178/83. The Department have alleged suppression for invoking the extended period and accordingly, the aforesaid order has been passed. Shri Iyer mainly pleads that on merits they are eligible for exemption under Notification No. 178/83 for the following reasons : There is a Board circular that if the conditions of the notification prescribed are followed, even if the item is exempted, it should be construed to have paid the appropriate duty. In this context, he referred to the Board's instruction contained in TRU Circular 125/36/95-CH, dated 15-5-1995. He, therefore, urged us that even if the base yarn is cleared under the DEEC scheme availing customs exemption, it would be construed to have paid the appropriate duty.

3. Shri Puri, the Id. SDR, points out that the Board's circular may not be applicable in this case, because the exemption Notification No.178/83 also stipulates under proviso (i) that base yarn should not have availed of any exemption. Hence, the notification condition does not correspond with the situation envisaged in the Board's circular.

4. Shri Iyer, pleads that subsequently an amending notification has been issued, which allows exemption to texturised yarn manufactured out of imported base yarn under DEEC. This amendment is only clarificatory nature and cannot be construed to be applicable only prospectively.

Moreover, even if duty is paid, they would be eligible to get drawback of the duty, since the entire manufacture is under the customs bond executed under DEEC scheme. On the ground of time bar, he pleads that they were holding a licence and only on the department's advice, they tendered it for cancellation. They were under the bona fide belief that they were eligible for exemption; Moreover because of the amending notification, the policy of the Government is clear that such texturised yarn manufactured out of POY is not saddled with any duty burden. They had also been intimating the customs authorities about the receipt of the base yarn, since the base yarn is a notified item under Chapter IVA of the Customs Act. Hence, there was no intention to suppress any material fact and even if they have not intimated the excise authorities it cannot be construed to be a deliberate intention

with a view to evade duty.

5. Shri Puri however contends that the amended notification is a policy decision and would be applicable only prospectively. There were many cases booked by the Department in respect of such irregular avilment of exemption. Subsequently, the Government issued the amending notification. The request for issue of notification under Section 11C has not been agreeable to the Government so far. Hence it cannot be said that the amendment is only clarificatory.

6. On the financial ground, Shri Iyer pleads that they have incurred a loss to the extent of Rs. 17.86 lakhs during the year 1995 and they are small scale unit and they are not in a position to make the deposit.

7. After hearing both the sides, we find prima facie there are arguable aspects on the applicants' case particularly with regard to the eligibility of exemption. There is also a plea that if the duty is paid by the job workers, they would be collected from the main manufacturers, in which case they can claim for drawback. These factors indicate that they do not have any mala fide intention prima facie.

However, the fact that they have not intimated to the Excise Department is not denied and the eligibility for exemption is also a triable issue, which can be gone into at the time of hearing of the appeal.

Their financial position definitely indicates that cash deposit cannot be ordered in this case. Taking into account their financial viability and arguable aspects of the case, we direct the applicants to furnish Bank Guarantee for a sum of Rs. ten lakhs within a period of ten weeks from the date of receipt of this order and report compliance within eleven weeks, failing which their appeals are liable to be rejected. On furnishing the Bank Guarantee, there shall be stay against the recovery and waiver of pre-deposit of the duty and penalty amounts from both the applicants. Both the sides are at liberty to move for early hearing of the appeal in view of the amount involved in this case.

8. Plant & machinery ordered confiscation should not be disposed of and the normal course of production should not be interfered with.

