

Collector of Central Excise Vs. Usha Processors Pvt. Ltd.

Collector of Central Excise Vs. Usha Processors Pvt. Ltd.

SooperKanoon Citation : sooperkanoon.com/8980

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-13-1995

Reported in : (1996)(85)ELT109TriDel

Appellant : Collector of Central Excise

Respondent : Usha Processors Pvt. Ltd.

Judgement :

1. This appeal filed by the Revenue is directed against the impugned Order-in-Appeal passed by the Collector of Central Excise (Appeals), Bombay.
2. Shortly put, the facts of the case are that, the respondents are processing Rayon and Synthetic Yarn falling under T.I. 18 from basic raw material of Cashmilon fibre, which is a mixture of Shrinkable and non-shrinkable fibre, out of which Yarn is made by spinning process and the same is then steamed and processed in Hank dyeing machines in their factory. A Show Cause Notice dated 6-3-1976 was issued by the concerned Superintendent of Central Excise calling upon the respondents to show cause as to why the duty amounting to Rs. 2,50,977.85 be not demanded from them alleging that they had cleared 100% acrylic textured yarn, that is to say, bulked yarn without payment of Central Excise Duty leviable thereon under sub-item (ii) of T.I. 18 for the period from 1-3-1975 to 29-4-1975 and 30-4-1975 to 16-12-1975. The respondents hotly contested the Show Cause Notice. However, the Assistant Collector confirmed the demand vide his Order dated 4-1-1977. Against that Order of the Assistant Collector, the respondents filed their appeal which was rejected by the Appellate Collector of

Central Excise & Customs, Bombay, vide his Order-in-Appeal No. 856/77, dated 15-9-1977. Against that Order of the Appellate Collector, the appellants filed their Revision Petition before the Government of India which was rejected vide Order dated 7-7-1981. However, this Order was also challenged by the respondents in Writ Petition No. 1160/81 and the Bombay High Court vide its Order (Minutes of Order) dated 14-10-1981 set aside the aforesaid all the orders passed by the authorities below and sent back the case to the original authority, that is to say, the Assistant Collector concerned for consideration and determination of the entire dispute de novo regardless of the reasonings and considerations earlier arrived at by the adjudicating authority. On receipt of the papers, the Asstt. Collector vide his impugned Order-in-Original No. V(18) 2-1-77/7140, dated 8th July, 1983 dropped the proceedings by withdrawing the Show Cause Notice on the ground that there is no iota of evidence on record to show that the Yarn cleared by the respondents during the relevant period was bulked yarn. Against that order of the Assistant Collector, the Revenue filed the appeal before the Collector of Central Excise (Appeals), Bombay, but without success. Hence the present appeal by the Revenue.

3. Appearing on behalf of the Revenue, Shri Mohan Lal, learned JDR, submitted that the respondents undertake the process of dyeing of acrylic yarn. The yarn is first passed through steam and then dyed in Hank Dyeing machines. As a result of this process, the yarn becomes slightly fluffy and introduces noticeable bulked yarn. He took us through the definition of "Bulked Yarn" as given in the Textile Terms and Definition, sixth edition of Textile Institute of Manchester, to show that Bulked Yarn could be produced not only out of the continuous filament yarn but also out of staple yarn. He also took us through the method of texturising yarns as given in the "Standard Handbook of Textiles" by A.J. Hall, and to the method of fibre modification as given in Kirk-Othmer Encyclopaedia of Chemical Technology, Volume 10.

He highlighted that the test report given by the SASMIRA cannot be relied upon as the respondents got the sample tested after the remand of the base by the High Court, and the samples so drawn and sent for test to SASMIRA were not drawn in the presence of the Department's Officer and, therefore, it is difficult to correlate

the findings given in the test report that the goods in question which were cleared during the relevant period. In reply, Shri Ashok Mehta, learned counsel, supported the impugned order.

4. Considered. The Assistant Collector on the basis of the test report has held that the Yarn which the respondents, M/s. Usha Processors Pvt.

Ltd. received could not have any bulking effect even if it is passed through steam of 102C temperature or by use of sophisticated machinery and modern electronic controls or hot water since the very nature of yarn is not helpful for bulking, as opined by the authority after analysing the sample and further that there is no single document on record to show that the Yarn cleared by the respondents during the period under reference was bulked yarn and that the yarn received, dyed and cleared by the respondents was 100% acrylic yarn having low shrinkage and could not be used by itself for bulking purpose. For the said findings, the Assistant Collector in addition to the test report has also relied upon the invoices and affidavits in support of his conclusion. On appeal by the Revenue before the Collector (Appeals), the Collector (Appeals) also affirmed the said findings of the Assistant Collector, adding that "In the absence of any test carried out by the Department either of the grey acrylic yarn, the dyed and bleached yarn, there is no warrant whatsoever in holding that the processed yarn is bulked yarn. In any case, the Department, has not informed the respondents the basis on which such conclusion was arrived at. This amounts denial of natural justice. In the circumstances, the respondents get "the benefit of doubt". The contention of the Revenue that the test report given by the SASMIRA cannot be relied upon as the respondents got the samples tested after the remand of the case by the High Court, and the samples so drawn was not drawn in the presence of the Department's Officers and, therefore, the same cannot be correlated, has no force. From the order-in-original passed by the Assistant Collector, it is clear that the genuineness of the samples were never doubted by him, on the other hand, he has relied upon the test report. The fact that sample was drawn or tested after the remand of the case by the High Court does not make any difference when the genuineness of the samples or correctness of the test report was never challenged by the Revenue during adjudication proceedings. After going through the literature

cited by the learned JDR, we find that in the light of the test report the findings recorded by both the authorities below are correct and does not call for any interference at our end. In the result, the appeal filed by the Revenue is rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com