

Commissioner of Central Excise, Aurangabad Vs. M/S. Devgiri Textiles Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-11-2012

Judge : The Honourable Mr. S.S. Kang, Vice President & the Honourable Mr. Sahab Singh, Member (Technical)

Appeal No. : Appeal No. E/1561/2004-Mum. (Arising out of Order-in-Appeal No. BPS(22)145/2004 dated 19.1.2004)

Appellant : Commissioner of Central Excise, Aurangabad

Respondent : M/S. Devgiri Textiles Mills

Advocate for Pet/Ap. : For the Appellant : Shri A.K. Prabhakar, Superintendent (A.R.). For the Respondent : Ms. Aparna Hirandagi, Advocate.

Judgement :

S.S. Kang

Heard both sides.

2. Revenue filed this appeal against the impugned order passed by the Commissioner (Appeals).

3. The brief facts of the case are that respondents are engaged in the manufacture of Cotton Yarn and Cotton Fabrics falling under Chapter 52 of the Central Excise Tariff Act, 1985. The officers visited the factory premises of the respondent. During

the course of scrutiny of the records it was noticed that there was difference in the quantity of yarn produced for the year 2000-2001 as compared with quantities mentioned in the RT 12 returns. The statement of Shri V.K. Pathak, Sales Manager was recorded, the show cause notice was issued and the adjudicating authority confirmed the demand of Rs.4,49,196/- and imposed a penalty of equal amount by rejecting the contention of the respondent that in the private records the figures are mentioned in respect of production for monthly target. The respondents filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals) held that the private records maintained for the quantity of the yarn at spindle stage whereas the respondents are clearing after winding on cone finally. The Commissioner (Appeals) held that Spindle stage yarn did not attain the status of goods as defined under Section 2(f) of Central Excise Act, 1944. Hence are not liable for duty.

4. The Commissioner (Appeals) also held in favour of the respondent on the ground that as per the statement of Shri V.K. Pathak, the quantity mentioned in the private records at spindle stage yarn is the projected figures for the month and not factual data of production and no physical stock taking was undertaken in respect of the yarn at spindle stage and allowed the appeal.

5. The Revenue filed this appeal on the ground that the finding of the Commissioner (Appeals) that spindle stage yarn did not attain status of goods as defined under Section 2(f) of the Central Excise Act. Hence, are not liable for duty. The Revenue relied upon the decision of Hon'ble Supreme Court in the case of Collector of Central Excise, Jaipur Vs. Banswar Syntex Ltd. reported in 1996 (88) E.L.T. 645 (SC) to submit that the yarn at spindle stage after it has been spun is fully manufactured product. Hence, liable to excise duty at that stage.

6. We find in view of the decision of Hon'ble Supreme Court in the case of Banswar Syntex Ltd. (supra) the findings in the impugned order regarding excisability of yarn at spindle stage is not sustainable. Hence set aside.

7. Further, we find that the Revenue relied upon the quantity mentioned in the private records of the yarn at spindle stage and when it compared to the yarn on cones reflected in the RG 1, there is a difference of quantity and the Revenue is

demanding duty in respect of the quantity found less at the RG.1 stage than the quantity mentioned in the private record at spindle stage. The admitted facts of the case are that no physical stock taking was conducted of the yarn at spindle stage. Further, the sales manager in his statement submitted that the quantity mentioned in the private record is projected quantity of production for the month, there is no oral or documentary evidence on record to show that there is a quantity clearance of the yarn. Further, we find that the adjudication order also held that the clandestine removal has not been proved in this matter. In these circumstances, we find no ground for interference with the finding of the Commissioner (Appeals), in this regard. The appeal is partly allowed as indicated above.

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