

(2015) 10 SC CK 0023
In the Supreme Court Of India
Case No : Civil Appeal No. 2958 of 2007

Commissioner of Central Excise	Vs	APPELLANT
Angadpal Indl. P. Ltd.		RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Citation : (2015) 325 ELT 228

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri A.K. Sanghi, Senior Advocate, Ms. Binu Tamta, Rajiv Singh and B. Krishna Prasad, Advocates, for the Appellant; Ms. Padmavati Patil, S/Shri Sandeep Narain, Ashok B., Advocates and M/s. S. Narain and Co, for the Respondent

Final Decision : Allowed

Judgement

1. The respondent herein is engaged in the manufacture of processed textile fabrics falling under Chapter Headings 54.06 and 55.13 of the Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as "Act").
2. The processed textile fabrics have been specified by the Central Government under Notification No. 41/98-C.E. (N.T.), dated 10-12-1998 as notified goods on which there shall be levied and collected a duty of excise in accordance with the provisions of Section 3A of the Central Excise Act, 1944.
3. Assessee, accordingly, had to discharge its liability from 16-12-1998 on the processed textile fabrics in terms of Rule 96ZQ of the Central Excise Rules, 1944 read with the Annual Capacity Production determined under the Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998.
4. Assessee had applied for the abatement of duty paid under the provisions of sub-section (3) of Section 3A of the Act on (1) Stenter of "SM-ECON-2100 make which remained closed during the period from 6-11-1999 to 14-11-1999, from 10-12-1999 to 18-12-1999 and 11-2-2000 to 19-2-2000 (2) on the Stenter of

PRIMATEX for the period from 10-1-2000 to 18-1-2000.

5. Sub-rule (7) of the Rule 96ZQ of the Central Excise Rules, 1944, (hereinafter referred to as "Rules") as it existed prior to 1-3-2000 provides that when an independent processor does not produces or manufactures the processed fabrics specified in sub-rule (1) during any continuous period of not less than 7 days and wishes to claim abatement under sub-section (3) of Section 3A of the Act, the abatement will be allowed subject to the fulfilment of the conditions prescribed in the said rules.

6. The abatement of duty under consideration in respect of Stenter of "SM ECON-2100 make are for the period of closure from 6-11-1999 to 14-11-1999, 10-12-1999 to 18-12-1999 and 11-2-2000 to 19-2-2000 and in respect of Stenter of PRIMATEX for the period of closure from 10-1-2000 to 18-1-2000 wherein the duty payable on the stenters installed in the factory premises has to be paid in advance during the months of November, 1999, to February, 2000, in terms of closure (e) to sub-rule (7) of the Rule 96ZQ of the Rules.

7. Department's case is that Notification No. 18/99-C.E. (N.T.), dated 28-2-1999 amended the provisions of Rules 96ZQ by inserting clause (e) and according to clause (e), when the claim for abatement by independent processors is for a period less than one month, he shall be required to pay the duty as applicable for the entire period of one month and may, subsequently, seek such claim after payment of such duty and in view of this insertion, the conditions of prior payment of duty for claiming abatement were applicable from 28-2-1999 onwards.

8. The submission of Mr. A.K. Sanghi, learned senior counsel appearing for the Revenue, is that the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as CESTAT) has relied upon a circular dated 15-9-1999 to give the benefit to the respondent-assessee herein which is not the correct approach inasmuch as thereafter, Section 96ZQ of the Rules were amended by inserting clause (e) thereof and as per this clause, it was incumbent upon the assessee to pay the duty first, before claiming any rebate. On that basis, it was argued that since no such duty was paid in the first instance, the respondent was not entitled to any rebate.

9. It is not even necessary to go into this question because of a simple reason. The vires of the aforesaid Rule was challenged before the Madras High Court in "Beauty Dyers v. Union of India" [2004 (166) E.L.T. 27 (Mad.)] and the High Court held the said Rule to be ultra vires the erstwhile Section 3A of the Act. Special leave petition was preferred by the Union of India against the said judgment which was dismissed by this Court. The judgment is reported by the Madras High Court in "Commissioner of Central Excise v. M/s. Entex Pvt. Ltd. [2015-TIOL-2123-HC-MAD-CX = 2015 (324) E.L.T. 466 (Mad.)].

10. From the aforesaid, it becomes clear that the respondent was not supposed to pay any duty, more so, when the entire exercise was revenue neutral. It

legitimately claimed the rebate. We, thus, do not find any reason to interfere with the impugned judgment of the High Court.

11. The appeal is, accordingly, dismissed.