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**(2023) 07 CESTAT CK 0051**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Customs Appeal No. 40190 Of 2014

M/S. Commissioner Of Customs

APPELLANT

Vs

M/S. Natraj Interwoven Labels & Mfg. Co

RESPONDENT

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**Date of Decision :** 26-07-2023

**Acts Referred:**

**Citation :** (2023) 07 CESTAT CK 0051

**Hon'ble Judges :** Sulekha Beevi C.S., Member (J); Vasa Seshagiri Rao, Member (T)

**Bench :** Division Bench

**Advocate :** Anandalakshmi Ganeshram, S. Yogalakshmi

**Final Decision :** Dismissed

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## **Judgement**

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the respondent imported silk fabrics and availed exemption as per Notification No. 30/2004-CE dated 09.07.2004. The Department was of the view that the appellant is not eligible for the benefit of the notification as they have not fulfilled the condition of the notification, that no CENVAT Credit of duty paid on inputs shall be taken by the importer. The Commissioner (Appeals) set-aside the order passed by the original authority holding that the appellant is not eligible for the notification. Aggrieved by such order passed by the Commissioner (Appeals), the Department is now before the Tribunal.

2. The Learned Authorized Representative, Ms. Anandalakshmi Ganeshram reiterated the grounds of the appeal. It is submitted that that respondent is a trader and has not fulfilled the condition of the notification that CENVAT Credit on inputs should not be availed by the importer. The wording of the notification is that the benefit is not applicable to goods in respect of which credit of duty on inputs has been taken under the provisions of the CENVAT Credit Rules, 2004. The silk yarn is not leviable to Excise Duty and therefore, the respondent has not availed credit of the duty on inputs. For these reasons, the Commissioner

(Appeals) ought to have held that the respondent is not eligible for the benefit of concessional rate of CVD. The Learned Authorized Representative prayed that the appeal may be allowed.

3. The Learned counsel Ms. S. Yogalakshmi appeared and argued for the respondent. It is submitted that the respondent being a trader was not in a position to avail CENVAT Credit of duty paid on inputs. However, the goods imported is eligible for exemption of CVD as per Sl.No. 1 of the Notification No. 30/2004-CE dated 09.07.2004 as the goods fall under CETH 5004 to 5007 of Customs Tariff Act, 1975. It is submitted by the Ld. counsel for the respondent that the issue is settled by the decision of the Tribunal in the case Commissioner of Custom (Sea Port), Chennai Vs. Enterprises International Ltd. [2017 (346) ELT 423 (Tri. Chennai)]. The said decision was upheld by the Hon'ble Apex Court as reported in 2017 (346) ELT A130 (S.C). The earlier decision of the Hon'ble Apex Court in the case of SRF Ltd. Vs. Commissioner of Customs, Chennai [2015 (318) ELT 607 (S.C.)] was approved by the Hon'ble Apex Court. The Ld. Counsel prayed that the appeal may be dismissed.

4. Heard both sides.

5. The issue is whether the benefit of notification 30/2004 is eligible to the Respondent though Cenvat Credit has not been availed on inputs. The condition as per the notification is that the importer should not have availed the CENVAT Credit on the inputs. In the present case, it is an admitted position that the respondent has not availed any such credit. However, the reason for denying the benefit of the notification is that in the case of the appellant no such credit is admissible being a trader. The Tribunal had occasion to analyse the very same issue in the case of M/s. Enterprises International Ltd. (supra), the relevant paragraph reads as under:-

"16. In view of the above ruling by Apex Court, we are unable to accept the Revenue's plea that the Apex Court decision of SRF Ltd. and M/s. Motiram Tolaram are in direct conflict. Hon'ble Supreme Court has clearly considered all the previous decisions of Apex Court including the decision in the case of Motiram Tolaram v. UOI (supra). Therefore, the Revenue relying on the above case law and also the LB decision in the case of M/s. Priyesh Chemicals & Metals (supra) are not relevant. In view of the latest decision of Apex Court in SRF case & AIDEK Tourism Services Pvt. Ltd., the issue of CVD exemption under Notfn. No. 30/2004 on imported goods has attained finality. This Tribunal Bench decisions in the case of M/s. Prashray Overseas Pvt. Ltd. v. CC, Chennai stands confirmed by the Hon'ble Supreme Court in the above decision.

17. Before parting, we wish to record that the respondents repeatedly pleaded that under ICES-EDI system the Notification No. 30/2004-C.E., dated 9-7-2004 has not yet been uploaded and not figuring in the system for assessment even after a decade. This fact was already reported in this Tribunal order dated 10-8-2010 in the case of M/s. Elegant Fabric v. CC, Chennai (supra). Therefore,

we bring to the notice of the Chairman, C.B.E. & C. & DG (Systems), C.B.E. & C., New Delhi to rectify and upload the said notification in the EDI system at the earliest so that the Trade need not seek every time for manual assessment of Bill of Entry or file appeal against every assessed Bill of Entry under EDI before Commissioner (Appeals) as is happening at present in the Custom House.

18. By respectfully following the ratio of the Apex Court decisions (supra), we hold that the respondents are eligible for CVD exemption under Notification No. 30/2004-C.E., dated 9-7-2004. In view of the foregoing discussions, we hold that there is no infirmity in the orders of LAA and the same are upheld and all the Revenue's appeals are rejected. The cross objections filed by respondent get disposed. Copy of order be forwarded to the Chairman, C.B.E. & C. and D.G. System, New Delhi."

6. The Tribunal had followed the decision of the Hon'ble Apex Court in the case of SRF Ltd. (supra), the said decision in the case of Enterprises International Ltd. has been affirmed by the Hon'ble Apex Court as reported in [2017 (346) ELT A130 (S.C)]. Following the ratio laid by the Hon'ble Apex Court in the above decisions, we are of the view that the appeal is without any merits. The Department appeal is dismissed.