(1992) 08 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Appeal No. 817 of 1977

Shiv Silk Mills APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 10-08-1992

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Citation : (1992) 24 DRJ 180 : (1993) 41 ECC 97

Hon'ble Judges : S. Duggal, J

Bench : Single Bench

Advocate : U.A. Rana, Siraj Seth and Madan Lokur, for the Appellant;

Judgement

Santosh Duggal, J.

(1) The issue involved in this writ petition falls within a very narrow compass. Before proceeding to determine the issue, it is necessary to briefly notice the facts of the case.

(2) The petitioner is a processor, purchasing fabrics for embroidery work and effecting clearances of the embroidered fabric. According to the petitioner''s case, the goods were purchased directly from the mills, and at times from the open market, and it was not possible to ensure that the goods were received in mill packed condition, or were accompanied by documents certifying their duty paid character.

(3) The dispute arose in respect to the extent of the liability of the petitioner for payment of excise duty on the goods cleared by them. The period involved is June 1970 to March 1971. A demand of short levy, amounting to Rs. 13,891.45 was raised by means of show cause notice dated 12.5.1971, alleging that the petitioner were clearing cotton fabrics, after making embroidery, assessable under Tariff Item No. 19-1 (2) of the Central Excise Tariff, and that for the cotton fabrics (base fabrics) which they had received from the open market, they had not been able to establish their identity with the duty paying documents, and as

such the differential duty equivalent to the excise duty payable on the base fabrics was demanded from the petitioner. The relevant entry, as in force, at the time, reads as under:

19 Cotton fabrics. Ii Embroidery in the The duty for the time piece, in strips being livable on the or in motifs in base fabrics if not or in relation to already paid plus the manufacture 20 per cent ad valorem of which any pro- plus an additional cess is ordinarily duty equal to the duty carried on with the for the time being aid of power livable on the base fabrics if not already paid.

(4) It was modified by notification issued on 1.3.1969 under rule 8 (1) of the Central Excise Rules, 1954. The net result was that the petitioner was bound to pay 10% ad valorem duty on the embroidered fabrics and in addition also, the duty livable on the base fabrics, if not already paid. This was the notification applicable at the relevant time. Although there is a reference to subsequent notification further modifying the rate of ad valorem duty, payable by the processor, but we are not concerned with that.

(5) Admittedly, the petitioner had paid 10% duty on the value of the embroidered fabrics cleared by them. The demand was raised for the reason that there was no evidence to show that the duty had been paid by the petitioner on the base fabrics purchased by them, from the open market, and that they were liable to pay duty on that account also, in terms of the relevant tariff entry, as modified by the Notification of 1.3.1969.

(6) The petitioners pleaded, in reply to the show cause notice, that the goods were purchased from open market and it was not practicable to always insist on delivery of the goods in mill packed condition or of the documents showing payment of duty, and that in any case, there was presumption that the goods had been cleared from the factory gate of the manufacturer after paying duty and as such the purchasers from the open market cannot be burdened with this duty on the allegation that there was no evidence of duty on the base fabrics having been paid.

(7) This plea was rejected by the Assistant Collector Central Excise, and the appeal preferred against the order of the Assistant Collector to the Appellate Collector, Central Excise was also dismissed. The revision petition filed before the Central Government was also turned down.

(8) The issue that has been raised in the writ petition is as to the correctness, of the view taken by the excise authorities and the Central Government in revision, as to the liability of the petitioner to pay difference in duty on account of duty payable on the base fabrics or to discharge burden of proof that such duty had already been paid.

(9) I have heard the learned counsel for the parties and I find that the stand taken by the respondents is wholly untenable. The combined effect of rules 9 and 49 of the Central Excise Rules is that no goods can be cleared from the factory

gate of the manufacturer unless excise duty has been paid. It is the duty of the concerned authorities to ensure that no goods are allowed to be cleared without paying excise duty or in other words no clearance of manufactured goods escaped payment of excise duty, because once they enter the market, it becomes well-nigh impossible to trace the goods and prove their duty paid character. There is no provision in the Central Excise Rules obliging a purchaser in open market to collect documents showing duty paid character of the goods or even to insist on the delivery being made in mill packed condition.

(10) There is no dispute on facts that the petitioner, in so far as this demand is concerned, were purchasing goods from the open market. There was no justification for the Department to insist with the demand of payment of short levy or differential duty from the petitioner on the assumption that duty paid character of the base fabrics within the meaning of Tariff Entry No. 19 (l)(2) has not been established or that it has not been shown by any duty paying document that base fabrics were cleared from mills after payment of duty.

(11) A similar question came up before the Supreme Court in the case of Collector of Central Excise, Chandigarh Vs. Decent Dyeing Co., . where a similar entry came up for interpretation, the only difference being that there the goods in question were base yarn whereas in the present case it is the base fabrics. In that case also, the party concerned was processor, (dyer of acrylic yarns) and was clearing goods after doing job of dyeing whereas in the present case, base fabrics are procured by the petitioner and are cleared after finishing the job of embroidery. The Supreme Court quoted with approval the decision of the Delhi High Court in the case of Sulekh Ram & Sons v. Union of India and others 1978 E.L.T. 525, where with reference to rule 9 of the Central Excise Rules, it was held that under excise system, no goods can be removed from the place of manufacturer without first paying the excise duty, and as such a purchaser was entitled to presume that the goods are duty paid. The Court further referred to rule 49 which also deals with the point on which excise duty is chargeable or leviable. In that case, the Appellate Tribunal had upheld the contention of the party to the effect that the payment for short levy or differential duly, calling upon them to establish duty paid character of the goods was not sustainable. The Supreme Court upheld the decision of the Tribunal.

(12) On a parity of reasoning. I find the stand of the respondents in this case to be wholly untenable. It was not incumbent upon the petitioner to prove the duty paid character of the base fabrics purchased by them from open market, for embroidery work. There is no dispute that they paid the duty which was livable on the embroidered fabrics at time of clearance from their premises. The demand for short levy raised against them is thus liable to be quashed. Accordingly, I allow this writ petition and order quashing of the show cause notice dated 12.5.1971, and the orders passed by excise authorities and the order-in-revision dated 30.4.1977 of the Central Government are set aside.

(13) No order as to costs.