

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 02

Excise Appeal No. 11418 of 2014

[Arising Out Of OIA-VAP-EXCUS-000-APP-492-13-14 Dated- 12/02/2014 Passed By Commissioner of Central Excise, Customs and Service Tax-VAPI]

Emtee Poly Yarn Pvt Ltd

.....Appellant

Survey No. 17/1/2, Rakholi,
Silvassa, U T Of Dadra & Nagar Haveli

VERSUS

C.C.E. & S.T.-Vapi

.....Respondent

4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat-396191

APPEARANCE:

Shri. S.J. Vyas, Advocate for the Appellant

Shri. Anand Kumar, Superintendent (Authorized Representative) for the Appellant

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO. A / 11898 /2023

DATE OF HEARING:01.09.2023

DATE OF DECISION:11.09.2023

SOMESH ARORA

In the instant case, the appellants were in the year-2004 manufacturing Yarn which was subjected to Additional Excise Duty under Additional Duties Of Excise (Textiles And Textile Articles) Act, 1978 Vide Notification No. 31/2004-CE dated 09.07.2004 such additional duty of textile was done away with. Department however, with a view point that date of manufacture of goods is decisive in determination of levy in case of Excise Duty or for that matter, additional Excise Duty demanded the same on Yarn cleared by the appellants produced before cut off date of 09.07.2004 but

cleared after the date of withdrawal of additional duty of excise on stock which was available prior to the cut off date. Both the lower authorities upheld the demand relying upon the decision in the matter of COLLECTOR OF CENTRAL EXCISE HYDERABAD vs. VAZIR SULTAN TONACCO CO. LTD. as reported in 1996 (83) ELT 3 (S.C) in which it was held that even if goods were manufactured prior to the date of the same becoming dutiable, but were cleared later, the same become subject of levy of duty from the date of levy and such goods shall not be leviable to Excise Duty, if produced earlier. In short, the Hon'ble Supreme Court held that it is point and date of levy which is important and not the point or date of clearance of the goods to determine, if the goods manufactured were dutiable or not. The Hon'ble Supreme Court also while analysing the relevant provisions held that erstwhile Rule 9 of the Central Excise Rules, 1944 refers to removal of "excisable goods" and not of "goods", therefore, the goods per se must be excisable first before being subjected to levy of Excise duty before their removal. During the course of decision the Hon'ble Supreme Court also relied upon the decision of WALLACE FLOUR MILLS CO. LTD. VS. COLLECTOR OF C.EX. as reported in 1989 (44) ELT 598 (S.C.) and which held as follows:-

"It is well settled by the scheme of Central Excises and Salt Act and clarified by several decisions that even though the taxable event is manufacture or production of excisable article, the duty can be levied and collected at a later stage for administrative convenience. The scheme of the Excise Act read with relevant rules particularly Excise Rule 9A reveals that the taxable event is the manufacture and the payment of duty is related to the date of removal of such article from the factory. Therefore when the goods were unconditionally exempted from duty on the date of manufacture but were dutiable on the date of their removal they would be liable to duty because on the basis of Rule 9A of the Central Excise Rules, 1944, the Excise authorities are within competence to apply the rates prevalent on the date of removal."

The Hon'ble Apex Court also held the recovery of duty according to the "date of removal" does not make removal to be the taxable event for Central Excise. In the WALLACE FLOUR MILLS CO. LTD case the Apex Court agreed with the proposition that if 'Nil' rate of duty as per First Schedule Of Central Excise And Salt Act, 1944 is charged, it does not mean that goods are not excisable, as even 'Nil' rate of duty indicates that the goods were leviable under the tax. As against the above proposition, the learned Advocate seeks to place reliance on UNION OF INDIA Vs. HMM Limited as reported in 2011(9) TMI 426 (S.C). The decision duly considered, WALLACE FLOUR MILLS CO. LTD. VS. COLLECTOR OF C.EX cited (supra) as also concurred with Collector of Central Excise, Bombay Vs. Polyset Corporation as reported in 2000 (115) ELT 41 (S.C.). The Court dismissed the department's appeal in factual background of stock of Excise goods manufactured before and enhanced rate of duty, liability coming into force later, but goods having been cleared after such enhancement in the duty if held that the taxable event as stated in the WALLACE FLOUR MILLS CO. LTD. VS. COLLECTOR OF C.EX case is manufacture of the goods and payment of duty is related to the "date of removal" of all such goods from the factory. The Hon'ble Supreme Court relying on the Polyset Corporation case also held that whether goods were to be subjected to levy or not gets decided by the date of their manufacture and the rate of duty on the said goods, by the relevant date of their clearance.

2. The learned A.R reiterates the findings of the lower authorities.

3. Considered. While it is true from the analysis of aforesaid decisions that the impugned goods i.e. Yarn in this instance were taxable as on the date they were manufactured as levy was subsisting. On the date of clearance, on withdrawal of levy, the applicable rate of A.E.D had become 'Nil'. Therefore as, on the date of clearance 'Nil' rate of A.E.D. shall be applied to the goods cleared.

4. In view of the forgoing, the demand does not sustain. Appeal is therefore allowed.

(pronounced in the open Court on 11.09.2023)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi