CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 06.03.2017

Excise Appeal No. 56265 of 2013
(Arising out of order-in-appeal No. 01/RPR-I/2013 dated 08.01.2013 passed by the Commissioner (Appeals-I) Central Excise, Raipur)

M/s Uniworth Textiles Limited Appellant

Vs.

CCE, Raipur Respondent

Appearance:

Sh. Rupesh Kumar, Advocate for the appellant
Sh. G. R. Singh, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 52157 / 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order-in-appeal No. 01/RPR-I/2013 dated 08.01.2013 passed by the Commissioner (Appeals-I) Central Excise, Raipur.

2. The brief facts of the case are that the appellant during the period under consideration (August 2003 to November, 2005) was engaged in the manufacture of all wool fabrics, other blended fabrics and their waste falling under 51, 55 and 50 of the Central Excise Tariff. The appellant during the period under consideration had cleared finished goods in DTA, in terms of its DTA sale entitlement upon payment of duties at applicable rates availing the benefit of various notifications.

3. The dispute in the instant appeal relates to the Additional Custom duty, in terms of Additional duty (Textile and Textile Article) Act. The AED (TTA) provides that the goods manufactured and cleared by domestic units were exempted. But the benefit of the said exemption was denied to the appellant on the short ground being a 100% EOU. Department was of the view that the assessee was not entitled to the benefit of exemption notification which is only applicable to DTA units. Being aggrieved, the present appeal is filed by the appellant.

4. With this background, we heard Shri Rupesh Kumar, ld. Advocate for the appellant and Sh. G. R. Singh, ld. AR for the Revenue.

5. After hearing both sides and on perusal of record, it appears that as per Notification No.18/96 dated 23.07.1996 (Sl. No. 4 & 6) woven fabrics of fine or coarse animal hair or of horse hair and all goods were exempted. Further, the issue stands decided by the Tribunal in the case of ***Ratnagiri Textiles Ltd. vs. CCE, Jaipur-II – 2003 (161) ELT 975 (Tri. Del.***) wherein it was observed that:-

> "3. *We observe that the issue raised before the Hon'ble Gujarat High Court also as the effect `of the same proviso to Section 5A on the clearance of goods to DTA by an EOU. After considering the various provisions of the statute, the High Court held that additional duty of customs shall be reckoned on the effective rate and not tariff rate. During the hearing of the case, learned Counsels for the appellants placed before us a copy of the judgment of the Supreme Court dismissing the Special Leave Petition filed against the decision of the Gujarat High Court in the case of Lucky Star International and Others reported in 2001 (134) ELT 26 (Gujarat). The judgement of the Gujarat High Court was common for Lucky Star International and Varsha Exports cases. Apart from this, is the Circular dated 19th February, 1998 of the Ministry. The Circular clarified as under:*
>
> > *"2. Board have examined the issue carefully and find that the duty leviable under Section 3 of the Central Excise Act is to be*

> *calculated after giving effect to the exemption notifications. Therefore, goods produced in EOUs/EPZs cannot be charged to duty at Tariff rate.*
>
> *3. Normally duty leviable would be read with notification for the time being in force. Even in absence of such words in the notification, the duty leviable would be effective rate of duty only. Even in Section 3 of the Customs Tariff Act, the words used are 'leviable for the time being in force*'.

6. Moreover, in the case of ***Lucky Star International vs. Union of India – 2001 (134) ELT 26 (Guj.),*** the Gujarat High Court observed that-

> "10. *In view of the Notification read with Section 5A of the Central Excise Act, excisable goods referred in the notification which are produced or manufactured i the territory of India other than in territory of Kandla Free Trade Zone or EPZ are exempted of excise duty on the goods manufactured in the Kandla Free Trade Zone or Export Processing Zone and brought in other parts of India, as no exemption is granted from payment of duty under Section 5A. The Petitioners are not claiming exemption from payment of excise duty but are denying their liability to pay countervailing duty under Section 3 of the Customs Tariff Act, in view of the fact that such goods manufactured in India, are not liable to pay any excise duty. From the submission, it transpires that as the petitioners are manufacturing in Kandla Free Trade Zone or EPZ, the officer has called upon to pay the countervailing duty on the ground that the reprocessing has not been done in India. Except this, there is no other valid reason. As a matter of fact, if article is imported into India, the same shall be liable to duty equal to excise duty for the time being leviable on a like article, there is no excise duty, may be because of exemption*."

7. In the light of the above decisions (supra), it is evident that 100% EOU are also entitled to the benefit of DTA. When it is so, then we find no reason to sustain with the impugned order and the same is hereby set-aside.

8. In the result, the appeal is allowed.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant