IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1144 of 2009

[Arising out of Order-In-Appeal No. 50 (DK)/CE/JPR-II/2009 dated 2.2.2009 passed by Commissioner (Appeals) Central Excise, Jaipur]

M/s. Nitin Spinners Ltd. **Appellants**

Vs.

Commissioner of Central Excise, Jaipur II **Respondent**

Appearance:

Ms Rinky Arora, Advocate for the Appellants
Shri M R Sharma, DR for the Respondent

CORAM:

Hon'ble Mr S K Mohanty, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing : 19.05.2017
Date of Decision : 26.05.2017

FINAL ORDER NO . 53504 /2017

Per V Padmanabhan:

The appeal has been filed against order in appeal No. 50/2009 dated 2.2.09 passed by the Commissioner (Appeals), Jaipur. The appellant is a 100% EOU and is engaged in the manufacture of Cotton yarn and fabrics for export. The department noticed that the appellant has cleared without payment of duty in DTA, combed cotton /sliver falling under heading 52.03 of the Central Excise Tariff. The goods were described as “contamination free cotton” and cleared to M/s. Rajasthan Spinning and Weaving Mills Ltd. without payment of duty. Department was of the view that the appellant is required to pay duty on such goods in terms of S.No.4 of Notification No. 23/2003 dated 31.3.2003. The appellant resisted the move by arguing that goods cleared in DTA will be liable to payment of Customs duty only when they are subjected to process of manufacture within the meaning of ‘manufacture’ as defined under section 2(f) of the Central Excise Act, 1944. They claimed that goods i.e. combed cotton /sliver cannot be considered as ‘manufactured product’ since no new goods has emerged whatsoever in the process undertaken in their factory. However, both the original authority as well as Commissioner (Appeals) confirmed such demand of duty.

2. Aggrieved by said decision, the present appeal has been filed.

3. With the above background, we have heard Ms. Rinky Arora, learned Advocate for the appellant and Shri M R Sharma, learned DR for the Revenue.

4. Learned Counsel for the appellant argued that the disputed goods are described as combed cotton /sliver. These goods are made in the appellants factory by processing cotton fabric. They cannot be considered as manufactured product. No duty will be liable on

clearance of such goods from the factory of appellants, a 100% EOU since duty rate specified in the notification No. 23/2003 (S.No.4) are made applicable only to the goods produced or manufactured solely from the material produced or manufactured in India. She also relied upon the following case laws:-

1. ***CT Cotton Yarn Ltd. vs. CCE, Indore [2012 (284) ELT 572 (Tri-Del)];***

2. CCE, Pune-1 vs. Neha International Ltd. [2015 (315) ELT 89 (Tri-Mumbai)];

3. CCE, Pune I vs. Soex Flora P Ltd. [2014 (300) ELT 256 (Tri-Mum)];

4. CCE, Jaipur vs. Sesame Foods [2010 (254) ELT 504 (Tri-Del)];

5. CCE, Lucknow vs. Wimco Ltd. [2007 (217) ELT 3 (SC)];

6. CCE, Ahmedabad III vs. Gujarat Ambuja Export Ltd. [2015 (325) ELT 209 (SC)]; and

7. Hathaway Systems (India) Pvt. Ltd. vs CCE, Jaipur I [2016 (338) ELT 306 (Tri-Del)]

5. Learned DR argued that any goods cleared from 100% EOU will be liable to Customs duty. The CBEC vide Circular No. 314/30/97-CX dated 6.5.1997 has clarified that a broader view is called for in appreciating the concept of manufacture as applicable to a 100% EOU.

6. The Board’s letter has clarified that EOU scheme covers even those activities which may not be strictly considered as manufacture

under section 2(f) of the Central Excise Act. Hence, it has been further clarified that exemption under notification No. 1/95-CE will also be applicable to a 100% EOU.

In the present case, the dispute is with reference to combed cotton /sliver derived from cotton fabric which process may not amount to manufacture. In the impugned order, the learned Commissioner (Appeals) has relied upon the CBEC Circular and also the Tribunal's decision in the case of M/s. STL Exports Ltd. vs. CCE, Indore (supra) to conclude that the process of making combed cotton /sliver will have to be considered as manufacture within the broader view of the term 'manufacture' applicable to 100% EOU. Consequently, he has held that customs duty will be liable to be paid with the benefit of notification No. 23/2003 (S.No.4).

7. In the case of STL Exports Ltd. a 100% EOU, the dispute was with reference to the process of galvanization carried out on pipes. It was held that duty will be liable to be paid even though the process directly may not fall within the definition of manufacture. Similar views have also been taken by the Tribunal in many of other cases cited by the learned DR. In the present case, the process of making cotton sliver from fibre, may not amount to manufacture as per section 2(f). But the appellant has been permitted to produce the same and export. As per the 100% EOU scheme, if such goods are cleared

into DTA, Customs duty will be payable with benefit of Notification No. 23/2003. Following the Tribunal's decision (supra), we uphold the duty demand. The case law cited by the learned advocate are distinguishable in facts and hence we consider them as not applicable to the present case.

8. In the light of the discussions as above, the impugned order is sustained and the appeal rejected.

(pronounced in the open court on 26.05.2017)

(S K Mohanty)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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