Lal Woollen & Silk Mills (P) Ltd., Amritsar

Vs

Collector of Central Excise, Chandigarh

Civil Appeal No. 473 of 1986

(A. P. Mishra, R. P. Sethi JJ)

13.04.1999

ORDER

1. The short question raised for the assessee is, whether he is liable to pay excise duty on dyed worsted woollen yarn when he has already paid the duty on the worsted woollen grey yarn, if liable, whether he is entitled for set-off the difference of excise duty, which he paid for the "grey yarn" while being taxed on the said "dyed yarn". The two notifications imposing duty on the said two goods are Notifications Nos. 235 and 236 of 1976. It is not in dispute that for the first time separate rates of duties were imposed on "grey yam" and "dyed yam" in 1966. Thereafter, through the aforesaid notifications different tariff values and separate rates of duty were notified for the said two goods. In spite of this the assessee continued to pay the differential duty in view of the earlier practice without any objection from the Department. It is only on 24-8-1977 notice was issued by the Department refusing such set-off. The Department's case is that woollen yarn is notified in the Schedule to Rule 56-A of the Central Excise Rules. Thus under this rule grant of pro form a credit is permitted and not any set-off subject to the claim by the assessee under sub-rule (2) of Rule 56-A. As no such permission was obtained by the assessee from the Assistant Collector under Rule 56-A, the appellants were directed to show cause why Central excise duty of Rs. 4,08,789.96 should not be recovered under Rule 10 of the Central Excise Rules. The Assistant Collector confirmed the said demand overruling the assessee's objections with reference to the past practice. In appeal the Collector of Customs and Central Excise (Appeals), New Delhi confirmed the order passed by the Assistant Collector of Central Excise, Amritsar. The Customs, Excise and Gold (Control) Appellate Tribunal partly dismissed the appeal of the assessee with a majority of 2:1 relying upon the decision of this Court in Empire Industries Limited v. Union of India ((1985) 3 SCC 314 : 1985 SCC (Tax) 416). Learned counsel for the assessee attempted to distinguish this case that the said decision related to "cotton fabrics" while our case is of "woollen yarn". An attempt was made by the learned counsel for the assessee that conversion of grey yarn into dyed yarn did not amount to any manufacture hence two separate duties are not leviable. We do not find any merit in this submission. Admittedly both "dyed yarn" and "grey yarn" are covered by two separate distinct heads of tariff items with different duty. So this itself recognises them to be two different goods with separate levy. In view of this it cannot be urged that there is no manufacture of "dyed yarn" from the "grey yarn".

2. Next the only short point pressed for decision is, whether the appellant is entitled for set-off under Rule 56-A, when he has not followed the procedure as laid down under sub-rule (2) of the said rule. It is true it is not in dispute that the assessee has paid the duty on both "grey yarn" and "dyed yarn". The assessee also qualifies for a pro forma credit in case he applies in terms of sub-section (2) of Rule 56-A. It is also not in dispute that the assessee has not applied and has not followed the procedure as contemplated under sub-section (2) by making an application for pro forma credit. It is also true that the said rule was amended on 21-2-1981 by introducing sub-rule (2-B), under which

power was entrusted to the Collector both, to condone the defect of any procedure of sub-rule (2) and to confer benefit on such assessees. But we find this rule was amended only on 21-2-1981 and the period with which we are concerned is of the year 1976-77. Hence, the appellant cannot claim the benefit of this amendment. In view of this we do not find any error in the Tribunal's judgment when it did not grant set-off to the appellant. Admittedly, the appellant never applied or claimed for pro forma credit of the differential amount, hence the claim was rightly rejected.

3. We are also informed that the decision reported in Empire Industries Ltd. v. Union of India ((1985) 3 SCC 314 : 1985 SCC (Tax) 416) on which the Tribunal relied has been upheld by the Constitution Bench in the case reported in Ujagar Prints (II) v. Union of India ((1989) 3 SCC 488 : 1989 SCC (Tax) 469). Hence for all these reasons we do not find any merit in this appeal and is accordingly dismissed.