

CASE NO.:  
Appeal (civil) 6324-6328 of 2002

PETITIONER:  
M/s Nahar Industrial Enterprises Ltd. and Ors.

RESPONDENT:  
Union of India and Ors.

DATE OF JUDGMENT: 10/08/2004

BENCH:  
S.N. VARIAVA & ARIJIT PASAYAT

JUDGMENT:  
J U D G M E N T

WITH

(C.A.Nos. 6332/2002, 6329/2002, 6331/2002, 6330/2002, C.A. Nos.5133-34/2004 @ SLP) Nos. 24882-24883/2002, C.A. Nos. 5135-36/2004 @SLP) No.24884-24885/2002, C.A. Nos.5137-38/2004 @SLP) Nos.1223-1224/2003, C.A. Nos. 423-425/2003, C.A. No. 6989/2003, C.A. No.8018/2003, C.A. 9487/2003, C.A. No. 287/2004 and C.A. No.9694/2003)

ARIJIT PASAYAT, J

Leave granted in SLP) Nos. 24882-24883/2002, 24884-24885/2002 and 1223-1224/2003.

All these appeals involve identical issues and are, therefore, disposed of by this judgment which will cover each of the appeals.

Appellant in each case questions correctness of the view expressed by Central Board of Excise and Customs, New Delhi (hereinafter referred to as the 'Board') in Circular dated 19.10.2000 purporting to clarify that Additional Excise Duty (in short 'AED') under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (in short the 'Additional Excise Act') would also be leviable on yarns manufactured by 100% Export Oriented Undertakings (in short 'EOU') from indigenous raw materials and cleared into Domestic Tariff Area (in short 'DTA'), in addition to the Basic Excise Duty (in short the 'BED') payable under the Central Excise Act, 1944 (in short the 'Act'). Appellants also questioned legality of the Notifications issued by the Central Excise authorities for payment of AED on yarn cleared in DTA.

The appellants are registered as 100% EOUs engaged in the manufacture of cotton yarn out of indigenous raw materials attracting BED leviable under Section 3 of the Act and AED leviable under Section 3 of the Additional Excise Act. On the basis of exemptions granted by the Central Government from time to time under Section 5A (1) of the Act, Notification No.55/91-CE dated 25.7.1991 was made applicable to their cases for the purpose of exemption. Subsequently, Notification No. 8/97-CE dated 1.3.1997 was issued where certain manufacturers like the present appellants were only granted exemption in excess of the amount equal to the duty of excise leviable under Section 3 of the Act on like goods produced or manufactured in India other than in 100% EOUs or a free trade zone if sold in India. Subsequently, the said Notification was amended by Notifications Nos. 21/97-CE dated 11.4.1997, 7/98-CE dated 2.6.1998 and 11/2000-CE dated 1.3.2000. As a result of these amendments what came to be exempted was the amount in excess of the duties of excise leviable under the Act or under any other law for the time being in force.

The question that arises in these appeals is whether by addition of the words "or under any other law for the time being in force" producers or manufacturers other than 100% EOUs incur a liability to pay AED. The Board issued a Circular dated 19.10.2000 clarifying that it is so payable and Notification No.55/91-CE is no longer of any assistance to the manufacturers like the appellants. The view expressed in this circular was challenged in several Civil Writ petitions before the Punjab and Haryana High Court. By the impugned judgment the High Court dismissed the writ petitions holding that introduction of the words "or any other law for the time being in force" took away exemptions granted to the manufacturers like the appellants under Notification No.55/91-CE. All the writ petitions were disposed of by a common judgment which forms the subject matter of challenge in these appeals.

Learned counsel for the appellants submitted that both the Board and the High Court failed to notice that the introduction of the words "or any other law for the time being in force" did not in any way affect the exemption flowing from Notification No.55/91-CE. What the appellants were required to pay was the basic excise duty and AED as their counter parts who were not 100% EOUs were required to pay. That had nothing to do for creating a liability of AED so far as the appellants are concerned.

In response, learned counsel for the Union of India submitted that the view expressed in the Circular and endorsed by the High Court does not suffer from any infirmity. The basic intention which is clear from a bare reading of a Notification No.8/97-CE as amended by Notification No.11/2000-CE dated 1.3.2000 is that a manufacturer who is 100% EOU is not in more advantageous position vis-à-vis the others.

The relevant Notifications and the Circular read as follows:

"Notification No.55/91-CE dated 25.7.1991- Exemption from additional duty to all excisable goods produced or manufactured in a 100% Export Oriented Undertaking- In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), read with sub-section (3) of Section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts all excisable goods produced or manufactured in a hundred per cent Export Oriented Undertaking from the whole of the duty of excise leviable under the second mentioned Act.

Notification No.8/97 dated 1.3.1997 (before amendment)- Effective rate of duty on certain goods produced in FTZ or EOU:

In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the finished products, rejects and waste or scrap specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and produced or manufactured, in a hundred per cent export-oriented undertaking or a free trade zone wholly from the raw materials produced or manufactured in India, and allowed to be sold in India under and in accordance with the provisions of sub-paragraphs (a), (b), (c), (d) and (f) of paragraph 9.9 or of paragraph 9.20 of the Export and Import Policy, 1st April 1997 - 31st March, 2002, from so much of the duty of excise leviable thereon under Section 3 of the Central Excise Act, 1944 (1 of 1944), as is in excess of an amount equal to the duty

of excise leviable under the said section 3 of the Central Excise Act, on like goods, produced or manufactured in India other than in a hundred per cent export-oriented undertaking or a free trade zone, if sold in India.

Provided that nothing contained in this Notification shall apply where such finished products, if manufactured and cleared by a unit other than a hundred per cent export-oriented undertaking or a unit in a free trade zone, are wholly exempt from the duties of excise or are chargeable to Nil rate of duty.

Notification 8/97-CE after amendment vide Notification No.11/2000 dated 1.3.2000:

Effective rate of duty on certain goods produced in FTZ or EOU \026 In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the finished products, rejects and waste or scrap specified in the Schedule of the Central Excise Tariff Act, 1985 (5 of 1986) and produced or manufactured, in a hundred per cent export-oriented undertaking or a free trade zone wholly from the raw materials produced or manufactured in India, and allowed to be sold in India under and in accordance with the provisions of subparagraphs (a), (b), (c), (d) and (f) of paragraph 9.9 or of paragraph 9.20 of the Export and Import Policy, 1st April, 1997 \026 31st March, 2002, from so much of the duty of excise leviable thereon under section 3 of the Central Excise Act, 1944 (1 of 1944) as is in excess of an amount equal to the aggregate of the duties of excise leviable under the said section 3 of the Central Excise Act or under any other law for the time being in force on like goods, produced or manufactured in India other than in a hundred per cent export-oriented undertaking or a free trade zone, if sold in India.

Provided that nothing contained in this notification shall apply where such finished products, if manufactured and cleared by a unit other than a hundred per cent export-oriented undertaking or a unit in a free trade zone, are wholly exempt from the duties of excise or are chargeable to Nil rate of duty.

Circular:554/50/2000-CX dated 19.10.2000

F. No. 268/37/2000-CX. 8

Yarn- Leviability of Additional Duty of Excise in respect of DTA clearances of yarns made by 100% EOUs

Government of India  
Ministry of Finance (Department of Revenue)  
Central Board of Excise & Customs, New Delhi

Subject :- Leviability of Additional Excise Duty (Textile and Textile Articles) Act, 1970 in respect of DTA clearances of yarns made by 100% EOUs \026 Reg.

1. I am directed to state that representations have been received in the Board seeking clarifications as to whether Additional Excise Duty under Textile and Textile Articles Act, 1978 hereinafter referred to as AED (T&TA) is leviable or not on cotton/man made yarns manufactured and cleared into DTA by a 100% EOU using indigenous raw materials. It has been represented that some field formations are demanding additional duty under the above mentioned Act on goods manufactured and cleared into DTA though there is specific exemption for such goods vide Notification No. 55/91-CE, dated 25.7.1991 and hence no Additional Duty will be attracted.
2. The matter has been examined. It is observed that as per proviso to Section 3 (1) of the Central Excise Act, 1944 goods produced in a 100% EOU and allowed to be sold in India are liable to excise duty which is equal to the aggregate of duties of customs leviable on like goods when imported into India. On import of textile yarns, apart from Basic Customs duty, goods will also be subject to Additional Duty of Customs (countervailing duty) which will be equivalent to total duties leviable as duty of excise on like goods produced in the country. (This CV duty will thus include basic Central Excise Duty under Central Excise Act plus Additional Duty of Excise under T & TA Act).
3. Notification No.8/97-CE dated 1.3.1997, as amended by Notification No.11/2000-CE dated 1.3.2000 provides that the excise duty payable by a 100% EOU under Central Excise Act in respect of the finished goods manufactured exclusively from indigenous raw material and cleared into DTA would be restricted to the "aggregate of the duties of excise leviable under the said Section 3 of the Central Excise Act or under any other law for the time being in force, on like goods produced or manufactured in India other than in a hundred per cent export oriented undertaking or a free trade zone". In other words, such yarns produced and cleared from 100% EOUs to DTA are required to suffer under Central Excise Act itself, by virtue of this exemption, duty which is equal to Basic Excise Duty on yarn plus AED (T & TA) leviable on yarn produced.
4. Since over and above the duty leviable under Central Excise Act, goods produced in a 100% EOU and cleared into DTA, would also be leviable to Additional Excise Duty under Textile & Textile Articles Act, Notification No.55/91-CE dated 25.7.1991 was issued which exempted all excisable goods produced or manufactured in a 100% EOU from the whole of duty of excise leviable thereon under AED (T & TA). Thus, effect of Notification No.8/97-CE as amended and 55/91-CE is to restrict the yarn stage duty to Basic Duty under Central Excise Act plus AED leviable under Textiles and Textile Articles Act.
5. The amendment to the Notification No.8/97-CE dated 1.3.1997, as mentioned in Para 2 above,

wherein "or under any other law for the time being in force" has been inserted, is significant and brings parity in the excise duties payable by a 100% EOU on yarns produced exclusively from indigenous materials on their domestic clearances and a domestic manufacturer manufacturing similar goods from indigenous materials.

6. Thus, it is clarified that w.e.f. 1.3.2000, AED (T & TA) would also be leviable on yarns manufactured by a 100% EOU from indigenous raw materials and cleared into DTA, in addition to the Basic duties under Central Excise Act. Wherever, such AED (T & TA) are not being collected, suitable steps for recovery may be taken expeditiously."

Contrary to what has been contended by the Union of India, a bare reading of the Notification No.8/97-CE dated 1.3.1997 and as amended by Notification 11/2000-CE dated 1.3.2000 shows that there was clear intention to rationalize the payment of duty by 100% EOUs and others. What is clearly intended relates to the liability of the manufacturer who is 100% EOU to pay the amount which amounts to aggregate of the duties of excise leviable under Section 3 of the Act or under any other law for the time being in force. That clearly indicates that whatever duty of excise was leviable under the Act and any other statute for the time being in force on the like goods produced or manufactured in India by the producer or manufacturer who is not 100% EOU if sold in India. The obvious object was to see that the manufacturer who is 100% EOU does not steal a march over his counterpart selling like goods in India. The earlier benefit given to the EOUs was for any duty payable under Section 3 of the Act which is in excess or the duties paid by its counterparts.

A perusal of the un-amended notification 8/97-CE and notification after amendment vide Notification No.11/2000-CE shows that only the following words were inserted by way of amendment:

- (i) introduction of the words "the aggregate of" after words "equal to" in the original notification.
- (ii) introduction of the following words after "Section 3 of the Central Excise Act" in the original notification i.e. "or under any other law for the time being in force".

That does not in any way create a liability on the 100% EOUs to pay AED. Notification No.55/91-CE dated 25.7.1991 is in no way diluted so far as the manufacturers like the appellants are concerned, notwithstanding what has been provided in Notification No.8/97-CE dated 1.3.1997 as amended by Notification No.11/2000-CE dated 1.3.2000. As stated above, the only change is that under Notification 8/97-CE dated 1.3.97 the 100% EOUs were exempt from paying duty in excess of amount of BED paid by the producer or manufacturer who is not 100% EOU, whilst after amendment by Notification 11/2000-CE dated 1.3.2000 the 100% EOU is exempt from paying duty in excess of amount of BED plus the amount of AED plus any other duties of excise under any other law for the time being in force, paid by the producer or manufacturer who is not 100% EOU. Thus, the view expressed in the Circular dated 19.12.2000 and view of the High Court are indefensible. The Circular afore-noted is, therefore, quashed.

The High Court's judgment impugned in these appeals is set aside.

The appeals are allowed to the extent indicated with no order as to costs.