

UNIFLEX CABLES LTD.

v.

COMMISSIONER, CENTRAL EXCISE, SURAT-II
(Civil Appeal No. 5870 of 2005)

AUGUST 24, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

Central Excise – Central Excise Rules, 1944 – Rules 173Q(1) and 173-B – Exemption Notification – Benefit under – Entitlement to – Notification no. 205/88–C.E. dated 25.05.88 as amended by Notification no.57/95 granted exemption from payment of central excise duty in respect of manufacture of wind mills, parts of wind mills and specially designed devices which run on wind mills – Appellant filed declaration claiming nil rate of duty so as to avail benefit under the aforesaid notification for the insulated electrical cables manufactured by it and supplied to the manufacturers of wind mills for using the same as part of wind mills – Commissioner, Central Excise, however, confirmed demand of excise duty and also imposed penalty under Rule 173Q(1) – Order upheld by Tribunal – Two issues: 1) Whether the insulated electrical cables manufactured by the appellant were eligible for exemption under the said exemption notification and 2) Whether imposition of penalty was justified in view of the facts and circumstances of the case – Held: The first issue is no more res integra in view of the Supreme Court judgment in the case of Nicco Corporation Ltd and is decided in favour of the Revenue – As regards the second issue about the imposition of penalty, the Commissioner, himself in his order-in-original has stated that the issue involved in the case was of interpretational nature – Keeping in mind the said factor, the Commissioner thought it fit not to impose harsh penalty and a penalty of Rs. 5 lakhs was imposed on the appellant*

A *while confirming the demand of the duty – The Commissioner also found that it was difficult to hold that the appellant knowingly dealt with excisable goods which were cleared without payment of duty – The Department itself also did not take it as a formal case of offence – In view of the aforesaid*
 B *facts, no penalty could be and is liable to be imposed on the appellant – Central Excise Tariff Sub-Heading No.8544.00.*

The appellant is engaged in the manufacture of insulated wires and cables falling under Central Excise Tariff Sub-Heading No.8544.00. It claimed benefit under
 C **Notification no. 205/88 – C.E. dated 25.05.88 as amended by Notification no. 57/95 which granted exemption from payment of central excise duty in respect of manufacture of wind mills, parts of wind mills and any specially designed devices which run on wind mills. The appellant**
 D **filed declaration under Rule 173-B of the Central Excise Rules, 1944 claiming nil rate of duty so as to avail benefit under the aforesaid notification for the insulated cables manufactured by it and supplied to the manufacturers of wind mills for using the same as part of wind mills. As the**
 E **appellant had not paid excise duty on the electrical cables supplied to the manufacturers of wind mills, show cause notices were issued to the appellant by the Revenue-Authorities for recovery of excise duty. According to the Authorities, the electric cables were**
 F **neither parts nor specially designed devices, which were necessary for manufacturing or running wind mills. For the aforesaid reasons, according to the authorities, benefit under the aforesaid notification could not have been availed by the appellant. Ultimately, the**
 G **Commissioner, Central Excise confirmed the demand of excise duty and imposed penalty under Rule 173Q(1) of the Rules. The appellant preferred appeal before the Tribunal which was dismissed. Aggrieved, the appellant preferred the instant appeal under Section 35-L (b) of the**
 H **Central Excise Act, 1944.**

Two issues arose for adjudication in the present case: 1) Whether the insulated electrical cables manufactured by the appellant would be eligible for exemption under the above mentioned exemption notification and 2) Whether imposition of penalty was justified in view of the facts and circumstances of the case.

Partly allowing the appeal, the Court

HELD:1. So far as the first issue is concerned, it is no more res integra in view of the judgment delivered by this Court in the case of Nicco Corporation Ltd.* The facts in the said case as well as in the present case are similar and, therefore, there is no need to consider the said issue again. In the circumstances, the first issue is decided in favour of the Revenue. It is also pertinent to note that the appellant has already paid sum towards excise duty. [Para 9] [597-G-H; 598-A]

* *Nicco Corporation Ltd. v. Commissioner of Central Excise, Calcutta* 2006 (203) ELT 362(S.C.) – relied on.

2. As regards the second issue about the imposition of penalty, the said order cannot be justified in the facts of the case. The Commissioner, himself in his order-in-original has stated that the issue involved in the case is of interpretational nature. Keeping in mind the said factor, the Commissioner thought it fit not to impose harsh penalty and a penalty of an amount of Rs. 5 lakhs was imposed on the appellant while confirming the demand of the duty. It is also evident from the said order that the Commissioner also found that except for the statement of the Excise Executive Director and Excise Clerk of the assessee company there was no other evidence pointing out any accusing finger at them in dealing with offending goods knowingly. A clear finding was recorded by the Commissioner that it was difficult to hold that the

A appellant knowingly dealt with excisable goods which
were cleared without payment of duty. Nor the
department itself took it as a formal case of offence. In
view of the aforesaid facts and also the fact that the
Commissioner himself found that it is only a case of
B interpretational nature, no penalty could be and is liable
to be imposed on the appellant. Consequently, the order
of the Commissioner imposing penalty as also the order
of the Tribunal so far as it confirms imposition of penalty
upon the appellant are quashed. [Paras 9 to 13] [597-H;
C 598-A-G]

Case Law Reference:

2006 (203) ELT 362 (S.C.) relied on **Paras 4, 5, 6, 9**

D **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5870 of 2005.**

From the Judgment & Order dated 7.7.2005 of the
Customs, Excise and Service Tax Appellate Tribunal, West
Zonal Bench at Mumbai.

E **Pramod B. Agarwala, Praveena Gautam, Abhishek Baid**
for the Appellant.

H.P. Rawal, ASG, K. Swami, Tanushree Sinha, B.K.
Prasad, Anil Katiyar for the Respondent.

F **The Judgment of the Court was delivered by**

ANIL R. DAVE, J. 1. This is an appeal under Section 35-
L (b) of the Central Excise Act, 1944 (hereinafter referred to
as 'the Act'), against the Judgment and Order no A/1326/WZB/
G 2005/C-iii dated 7.7.05 in Appeal No. E/1893/01, passed by
the Customs, Excise and Service Tax Appellate Tribunal, West
Zonal Branch, Mumbai.

H **2. The material facts are that the appellant is engaged in**

the manufacture of insulated wires and cables falling under Central Excise Tariff Sub-Heading No.8544.00. The appellant claimed benefit under Notification no. 205/88 – C.E. dated 25.05.88 as amended by Notification no. 57/95. The said notification grants exemption from payment of central excise duty in respect of manufacture of wind mills, parts of wind mills and any specially designed devices which run on wind mills. As the appellant had received orders from various wind mill manufacturers for specially designed electrical cables, which were to be used in the manufacture of wind mills, the appellant filed a declaration under Rule 173-B of the Central Excise Rules, 1944 (hereinafter referred to as 'the Rules') claiming nil rate of duty so as to avail benefit under the aforesaid notification for the insulated cables manufactured by it and supplied to the manufacturers of wind mills for using the same as part of wind mills for the period commencing from May,1995 to February, 2006. The appellant reversed the modvat credit taken on inputs for Rs. 16,14,088.32 for availing the exemption benefit under notification no. 205/88.

3. As the appellant had not paid excise duty on the electrical cables supplied to the manufacturers of wind mills as stated hereinabove, three show cause notices had been issued to the appellant by the Revenue -Authorities for recovery of total excise duty amounting to Rs.66,92,604/-. According to the Authorities, the electric cables were neither parts nor specially designed devices, which were necessary for manufacturing or running wind mills. For the aforesaid reasons, according to the authorities, benefit under the aforesaid notification could not have been availed by the appellant. Ultimately, the Commissioner, Central Excise, Surat – II by an order dated 20.2.1998, confirmed the demand of excise duty amounting to Rs. 66,92,604 and imposed penalty under Rule 173Q(1) of the Rules. The said order was challenged before the Tribunal and the Tribunal allowed the appeal by remanding the matter to the Commissioner. After hearing the appellant, the Commissioner again took the same view by his order dated 22.3.2001.

A 4. Being aggrieved by the aforesaid order dated 22.3.01,
 the appellant preferred an appeal before the Tribunal which was
 dismissed. The Tribunal relied on its earlier order passed in
NICCO CORPORATION LIMITED v. COMMISSIONER OF
CENTRAL EXCISE, CALCUTTA, whereby an analogous
 B issue was adjudicated and decided against the concerned
 assessee. Aggrieved by the said order dated 7.7.2005, the
 appellant has preferred the appeal before this Court.

C 5. The order passed by the Tribunal in *NICCO*
CORPORATION LIMITED (supra) was appealed against in
 C.A. No 1118/2001 before this Court. This Court, vide its order
 dated 22.3.06 dismissed the appeal and held that insulated
 electrical cables designed for use in wind mills would not be
 eligible for exemption under notification no 205/88 as amended.
 The said judgment is now reported as *Nicco Corporation Ltd.*
 D *v. Commissioner of Central Excise, Calcutta* 2006 (203) ELT
 362(S.C.). During the pendency of the proceedings, the
 Authorities had issued a notice of demand directing the
 appellant to pay central excise duty and penalty amounting to
 Rs 1, 33, 85,208. The appellant, in compliance of the said
 E notice, deposited a sum of Rs 66, 92,604 towards the excise
 duty payable by it. However, the amount of penalty has not been
 paid as stay has been granted against the said demand.

F 6. We have heard the learned counsel appearing for the
 concerned parties. It has been mainly submitted on behalf of
 the appellant that the electrical cables supplied to the
 manufacturers of wind mills were specifically designed for use
 in wind mills. They were special type of cables, without which
 the wind mills could not have been operated and, therefore, the
 revenue authorities ought to have granted exemption as stated
 G in the notification referred to hereinabove. The learned counsel
 appearing for the appellant gave details as to how the electric
 cables were specially used for running the wind mills. He further
 stated that without use of the electric cables supplied by the
 H appellant, functioning of the wind mills would not have been

possible. He, therefore, submitted that the appellant ought to have been given the benefit of the notification referred to hereinabove. A

7. On the other hand, Shri H.P. Raval, learned Additional Solicitor General appearing for the respondent-authorities relied upon the judgment delivered in *Nicco Corporation Ltd. v. Commissioner of Central Excise, Calcutta* (supra) and submitted that the electric cables manufactured and supplied by the appellant were not so indispensable that without which the wind mills could not have been operated. He further submitted that for the reasons recorded in the order passed by the Tribunal, the appellant is not entitled to exemption. He further submitted that the order imposing penalty is also just and proper as the appellant deliberately did not pay excise duty payable by it. Thus, he submitted that the impugned order is just and proper and, therefore, the appeal deserves to be dismissed. B C D

8. Two issues arise for adjudication in the present case:

- I. Whether the insulated electrical cables manufactured by the appellant would be eligible for exemption under the above mentioned exemption notification. E
- II. Whether imposition of penalty is justified in view of the facts and circumstances of the case. F

9. So far as the first issue is concerned, it is no more res integra in view of the judgment delivered by this Court in the case of *Nicco Corporation Ltd. v. Commissioner of Central Excise, Calcutta* (supra). The facts in the said case as well as in the present case are similar and, therefore, we need not consider the said issue again. In the circumstances, the first issue is decided in favour of the Revenue. It is also pertinent to note that the appellant has already paid a sum of Rs.66,92,604/- towards excise duty. As regards the second G H

A issue about the imposition of penalty, we are of the opinion that the said order cannot be justified in the facts of the case.

B 10. So far as the second issue with regard to the imposition of penalty in the present case is concerned, the Commissioner, himself in his order-in-original has stated that the issue involved in the case is of interpretational nature. Keeping in mind the said factor, the Commissioner thought it fit not to impose harsh penalty and a penalty of an amount of Rs. 5 lakhs was imposed on the appellant while confirming the demand of the duty.

C 11. It is also evident from the said order that the Commissioner also found that except for the statement of the Excise Executive Director and Excise Clerk of the assessee company there was no other evidence pointing out any accusing finger at them in dealing with offending goods knowingly. A clear finding has been recorded by the Commissioner that it was difficult to hold that the appellant knowingly dealt with excisable goods which were cleared without payment of duty. Nor the department itself took it as a formal case of offence.

F 12. When we take into consideration the aforesaid facts and also the fact that the Commissioner himself found that it is only a case of interpretational nature, in our considered opinion, no penalty could be and is liable to be imposed on the appellant herein.

G 13. Therefore, in the facts and circumstances of the present case we are of the view that penalty should not have been imposed upon the appellant. Consequently, we quash the order of the Commissioner imposing penalty as also the order of the Tribunal so far as it confirms imposition of penalty upon the appellant. The appeal is allowed to the aforesaid extent leaving the parties to bear their own costs.

H B.B.B.

Appeal partly allowed.