

Ajanta Dyeing Vs. Collector of Central Excise

Ajanta Dyeing Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/11089

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-23-1997

Reported in : (1998)(103)ELT101TriDel

Appellant : Ajanta Dyeing

Respondent : Collector of Central Excise

Judgement :

1. The appellants were engaged in processing of cotton fabrics as well as man-made fabrics. Jurisdictional Central Excise officers pursuant to an intelligence visited their factory premises on 28/29-10-1985. The check conducted by them and documents examined, led them to believe that during the period 19-6-1985 to 12-10-1985, the assessee had cleared clandestinely without payment of duty man-made fabrics measuring 15,56,376 L. Mtrs. on which duty evaded worked out to Rs. 13,73,971.29 and also cotton fabrics measuring 13,27,995 L. Mtrs. on which duty evaded amounted to Rs. 2,34,763.21. Pursuant to a show cause notice, the Collector adjudicated the case, confirmed the demand for duty not paid, ordered confiscation of the goods seized and also imposed penalty of Rs. 5 lakhs on the assessee. The present appeal is directed against this order.

2. Shri Udey Joshi, Advocate argued the case for the appellants and Shri M. Hajamohideen, JDR represented the Revenue.

3. Shri Joshi stated that out of 17 lots under which goods were clandestinely removed, he was contesting calculation of duty pertaining to 7 lots. It was his case

that whereas the Department had calculated duty short levied on the assumption that goods were man-made fabrics; the goods were actually cotton fabrics attracting much less duty. He had made the arguments before the Collector also but the Collector had not considered the arguments. He referred to the certificate given by Matulya Mills Ltd., dated 2-12-1985. We have seen the copy of the certificate. The certificate covers 8 sorts. The blend percentage shown in the certificate indicates that only 4 of 8 sorts could be described as cotton fabrics and rest were clearly man-made fabrics. Shri Joshi also took us through the reply to the show cause notice in which 7 lots are described in claiming that they were covering cotton fabrics and not man-made fabrics. We find that even where these lots were received from M/s. Matulya Mills Ltd., there is no co-relation between lot numbers shown in the reply and the sort numbers indicated in the certificate. During the hearing, we asked the learned Advocate to show us total documentations kept internally by the appellant's unit to show that those sorts or lots under which cotton fabrics were received, were those which formed part of goods clandestinely cleared. Learned Advocate fairly conceded that on account of the closure of the appellant's unit, he could not show such documentations. From para 13 of the impugned order, we find that even before the Collector such co-relation was not shown by the assesseees. In the absence of the specific documents to show that goods clandestinely cleared under these 7 lots consisted of cotton fabrics received under claimed sorts or lots, no relief can be considered. We upheld the Collector's finding that the goods were man-made fabrics and hold that calculation of duty not paid was correct.

4. Learned Advocate has claimed that 1% discount was given to all buyers uniformly and the deduction on this account was warranted. Shri Mohideen stated that even in the price list filed by the assesseees, no discount has been claimed. For discount to be admitted. The factum of its availability has to be known to the buyers as well as to the department. The Collector in para 11 of his order has, on this ground, not allowed this deduction. We find no infirmity in this logic and rule that discount claimed at this stage is not admissible.

5. Learned Advocate claimed that calculation has been made without allowing for deduction of element of duty. Shri Mohideen submitted that since duty has not

been paid at all, no deduction could be claimed. We find that Sub-clause (2) of Section 4 of the Central Excises and Salt Act, makes it clear that value in relation to excisable goods does not include the amount of duty payable on such goods. It is not material whether such duty has been collected from the buyers or not, it has been held by the CEGAT in their judgment in the case of Geep Industrial Syndicate, reported in 1995 (80) E.L.T. 341 that if duty is found payable the deduction has to be given from the value. On this count only, we find merit in the submissions of the learned Advocate.

6. Arguing on the quantum of penalty of Rs. 5 lakhs, the learned Advocate claimed that bulk of the duty demand consisted of Additional Duty of Excise. He stated that at the material time, the provisions of Additional Duty of Excise (Goods of Special Importance) Act, 1957 did not provide for penalty to be imposed on the defaulters. In this connection, he referred to the judgment of the Tribunal in the case of Syntex Processors v. Collector of Central Excise, Chandigarh, reported in 1994 (71) E.L.T. 386 in which following the law laid down by the Delhi High Court, the Tribunal has remitted penalty. We are not impressed with this argument. The basic duty of excise evaded comes to Rs. 1,24,440/-. In terms of Rule 173Q of the Central Excise Rules, 1944, the maximum penalty leviable is three times the value of the offending goods which in the present case is much higher than the penalty imposed. We, however, take note of the second submission made by the learned Advocate that the appellants had paid the entire duty short levied even before the adjudication, of which a part was paid even before the issue of show cause notice. On this ground alone, we find some justification in awarding marginal reduction in the quantum of penalty.

7. We, accordingly, reduce the quantum of penalty from Rs. 5 lakhs to Rs. 4 lakhs and direct the Collector to calculate the duty short levied by deducting the element of duty payable. Subject to this modification, the order of the Collector is upheld.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com