Suresh Textiles Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-18-1997

Reported in : (1998)(97)ELT364TriDel

Appellant : Suresh Textiles

Respondent : Commissioner of Central Excise

Judgement :

1. M/s. Suresh Textiles was the merchant manufacturer getting the processing done from M/s. Siddeshwar Textiles Mills. The merchant manufacturer had filed a declaration in terms of Notification No.305/77 whereby they had agreed to give such details as were required to determine the assessable value. A show cause notice was issued on 1-5-1989 to both the parties demanding differential duty of Rs. 2,155.79 and seeking to penalise both. The Additional Collector passed the impugned order whereby he confirmed the duty and directed the merchant manufacturer to pay it. He also imposed a penalty on the merchant manufacturer. No action was taken by him on processors This order is now challenged before us. The appellants have requested decision on merits relying on substantial case law including the two judgments of the Supreme Court in the case of Ujagar Prints v. U.O.I.1997 (27) E.L.T. 567 (S.C.) and 1988 (38) E.L.T. 535 (S.C.). In the appeal memorandum the claim is also made that the demand is hit by limitation.

2. We have heard Shri Sanjeev Srivastava, learned JDR for the department.

3. In the two judgments of the Supreme Court cited by the appellants, it has been held that the job workers namely the processor is the manufacturer in terms of the Section 2(f) of the Central Excises and Salt Act, 1944 and not the merchant manufacturer. Therefore no proceedings in which duty has been confirmed from the merchant manufacturer can sustain. We, therefore, allow this appeal, set aside the impugned order and direct appropriate relief if any.