Syntex Processors Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-20-1998

Reported in : (1998)(100)ELT214TriDel

Appellant : Syntex Processors

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants are aggrieved by the order of the Commissioner of Central Excise (Appeals), Chandigarh upholding the Dy. Commissioner's order of confirmation of duty demand of Rs. 98,358.30 on a quantity of 37,847.85 mtrs. of processed man-made fabrics found short on 16-7-1994, and imposing a personal penalty of Rs. 25,000/-.

2. The brief facts of the case are that on 16-7-1994, Central Excise Officers visited the factory premises of the appellants herein who are engaged in the processing of man-made fabrics falling under Chapters 54 and 55 of the Schedule to the CETA, 1985 and inspected the records. RG 1 register was found written up to date depicting nil balance of fully finished fabrics and on verification of EB-4, no fully processed fabrics were found, which tallied with the record. The statement of Shri Narender Kumar Khanna, Partner of the appellants unit was recorded on the spot, wherein he explained that, out of the total alleged excess, a quantity of 28,616 mtrs. was received on 15-7-1994 after office hours when no one other than the Excise Clerk was present and he received the goods into the factory and took the challan with him without entering the goods in the grey fabric register and the entry

would have been made on 16-7-1994. Regarding the remaining excess and shortage in various lots, he explained that, since the man-made fabrics received from different customers was similar in appearance they got intermixed with other lots because the lot Nos. assigned to different fabrics got defaced due to the use of deep coloured dyes and chemical treatment, thus resulting in wrong delivery of the excess and shortage in different lots. On 22-7-1994, the appellants wrote to the Commissioner of Central Excise, Chandigarh submitting that the alleged shortage and excess were due to the fact that bulk of the fabrics were lying at different stages of processing in wet or semi-wet condition and got intermixed due inter alia to the fact that the marked lot No.had got defaced during the processing. They also stated that the actual position would become clear only after each lot had undergone the complete processing and the fabrics after processing were cleared on payment of duty. A show cause notice was issued on 16-12-1994 proposing recovery of duty on the quantity found short and proposing penalty and the notice was adjudicated by the Assistant Commissioner who confirmed the duty and imposed a penalty of Rs. 25,000/-; the lower appellate authority having upheld the adjudication order, the appellants have filed the above appeal.

2. I have heard Ms. Ginni Bedi, learned Counsel and Shri Y.R. Kilania, learned DR and carefully considered their submissions and perused the records, including the statement of Shri Narender Kumar Khanna.

3. No doubt he has stated that he was satisfied with the verification done by the Central Excise staff. But that by itself is not sufficient to establish the charge of clandestine removal of processed grey fabrics. Shri Khanna has sought to explain the shortage in various lots stating that the appellants were processing blended man-made fabrics and the quality of fabrics of all lots being similar and further because the lot No. assigned to the fabrics sometimes sub-merged in the dye stuff and becomes illegible. The goods of one lot get mixed or merged with the other lots resulting in wrong delivery and excess and shortage in different lots. He has also stated that the lot Nos. are marked by illiterate workers who sometimes mark lot Nos. wrongly. The appellants have also subsequently registered their protest in respect of inaccurate manner of verification in arriving at the quantity of shortage and excess. It has also been explained before me by the learned Counsel that it is

a common practice in processing units to simultaneously issue various lots of grey fabrics received, and various lots are made into batches which are to be dyed and printed in similar colour assortments because of saving on labour, time, colours and chemicals, etc. Each lot of grey fabrics having same blend received from different customers is segregated and a continuous piece is made by stitching the pieces of various lots together which are required to be dyed in the same colour and printed in the same colour. Each batch (Palli) is dyed and printed together while the goods are undergoing different stages of processing, the Palli are found in the shape of rope or in rolled form, and only after the final finishing of the goods, the batch or Palli is unstitched and each piece is segregated/identified lot-wise and then clearance of goods is effected lot-wise.

4. In view of the above, I hold that the evidence on record is not sufficient to establish the charge of clandestine removal and that the Department has not discharged the burden cast upon it to establish such a charge. Therefore, I set aside the impugned order and allow the appeal with consequential relief, if any, due to the appellants in accordance with law.