

Prakash Cotton Mills Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-23-1999

Reported in : (1999)(112)ELT902TriDel

Appellant : Prakash Cotton Mills Ltd.

Respondent : Collector of Central Excise

Judgement :

1. This appeal arises out of and is directed against the order-in-original passed by the Commissioner, Nava Sheva.

2. Arguing for the appellants, Shri S.N. Kantawala, Advocate submitted that the applicants have obtained a letter of indent as a 100% Export Oriented Unit. The initial approval was for cotton made-up bed sheets and pillow covers. Subsequently, they also sought to include terry towels in their manufacturing activity and with that object they approached the Ministry of Industry for the requisite permission to include this item. In anticipation of the approval, they placed an order for import of machines for making terry towels. He submitted that the consignments came into two parts one landed at Bombay and another at Nhava Sheva. He said that the dispute is in respect of the consignment landed at Nhava Sheva because the consignments landed at Bombay was allowed clearance against a bond to their private bonded warehouse for producing approval from the Ministry of Industry. He also stated that subsequent to the passing of the impugned order with reference to the consignment at Nhava Sheva, the party has obtained approval from the Ministry of Industry on 16-2-1994 and

since it was subsequent to the order, the same was not considered.

2. Shri S. Ramanathan, JDR submitted that out of the 12 machines, 10 machines were more than 7 years old and accordingly, the Department was justified in demanding the duty on the ground that licence was required with reference to the 7 machines. The Commissioner was also justified in denying the benefit since the approval from the Ministry of Industry was not there at the relevant point of time.

4. On careful consideration of the submissions made by both the sides, taking into consideration that the party has obtained the approval from the Ministry of Industry subsequent to the passing of the impugned order, we feel that there is some justification in prayer made by the appellants' Counsel that the entire issue requires to be examined by the adjudicating authority in the light of the approval from the Ministry. Conceding to his request, we are remanding the matter for de novo consideration. The appellants are at liberty to take all the other connected pleas and adduce sufficient evidence in respect of their claim during the re-adjudication proceedings. The jurisdictional Commissioner may examine all the aspects and to pass an appropriate order in accordance with law after providing an opportunity to the appellants. Thus, this appeal is allowed by way of remand. Since the matter is old one, in view of the request made by the counsel, the adjudicating authority may expeditiously dispose of the matter on receipt of this order. Order accordingly.

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