

Vardhaman Dyeing and Printing Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-20-2000

Reported in : (2000)(92)LC217Tri(Mum.)bai

Judge : J S Murthy

Appellant : Vardhaman Dyeing and Printing

Respondent : Cce

Judgement :

1. This is the party's appeal against the above captioned impugned order dated 6.2.1992 praying for setting aside the same, and for relief that 11729.40 man made fabrics was not processed clandestinely and removed without payment of duty and to set aside the penalty and order of confiscation, and for such other relief as deemed fit.

2. The appellants partnership firm is engaged in the processing of man made fabrics falling under chapters 54 & 55 of the Central Excise Tariff Act and under the show cause notice dated 11.6.1991 a demand was made for Rs. 5,88,283.60 of additional duty of excise and Handloom Cess for Rs. 5,042.98 and why the goods should not be confiscated and why penalty should not be imposed on the appellants. After filing the reply by the appellants, and holding personal hearing, the impugned order was passed by the Collector of Central Excise, Mumbai-II confirming the demand of the additional excise duty, and penalty of Rs. 1.5 lakhs was imposed under Rule 173Q and confiscated seized man made fabrics

measuring 11729.40 mtrs. valued at Rs. 2,10,064.32 with a redemption fine of Rs. 40,000/- and the man made fabrics of M/s. Kamlesh Trading Co. were also confiscated with a redemption fine of Rs. 30,000/-, and a penalty of Rs. 25,000/- each was imposed on Ketan Manoharlal Shah, Manoharlal Premji Shah and Jayant Manoharlal Shah under Rule 209A and penalty of Rs. 5,000/- each was imposed on M/s. Kamlesh Trading Co., M/s. Shree Vinayak Traders and M/s. Anil Textiles under Rule 209A of the Central Excise Rules. The plant, machinery, building and land were also confiscated with a redemption fine of Rs. 50,000/- of the appellant under Rule 173Q(2). Hence this appeal.

3. In the course of the arguments, Shri V.G. Kumar, learned advocate for the appellants, has submitted that there is no dispute of duty liability on appellant, but the confiscation and penalty will not sustain in view of the judgment of the Delhi High Court in the case of Pioneer Silk Mills . The learned JDR has cited Gujarat High Court judgment in the case of Maheshwari Mills Ltd. v. UOI . In reply the learned Counsel for the appellants has drawn my attention to the amendment made in 1994 under the Finance Bill, 1994 at item No. 63 regarding Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957. This amendment covers offences and penalties also in relation to levy and collection of additional duties of excise on the goods specified in Sub-section (1), i.e. man made fabrics. He has also produced copy of the order of the CEGAT New Delhi in reference application No. 43/98-D and miscellaneous application No. 220/98-D in appeal No. 1251/89-D wherein there is a finding by the Tribunal that the 1957 Act of Additional Duties of Excise (Goods of Special Importance) Act does not contain the provisions for confiscation of goods and imposition of penalty. This order is dated 14th August, 1998. In this case the period covered is March 1989 to November 1990. The issue involved is clandestine manufacture and removal of man made fabrics without payment of additional excise duty and the confiscation of the seized goods and land, building, plant, machinery etc. and the imposition of penalty on the appellant and others.

4. From the above material, it is seen that the judgment of the Delhi High Court is subsequent to the judgment of the Gujarat High Court. The subsequent amendment of substituting Section 3 Clause (3) of the Additional Duties of Excise

(Goods of Special Importance) Act, 1957 clearly points out that before the amendment there was no such provision, which is held by the Tribunal as a bar in the reference application order. The original Section 3 Clause (3) contains only regarding the liability of excise duty and refund, and not the penalty and confiscation of the man made fabrics for which additional duty of excise was leviable. So under these circumstances the claim of the appellant about the setting aside of the penalty and confiscation order is justifiable. There is no dispute regarding the duty liability on the appellant. Hence I pass the following order: 5. For the reasons discussed above, the appeal is allowed in part, and the impugned order is set aside regarding imposition of penalty and the order of confiscation, and it is confirmed regarding the duty liability on the appellant. The appellant is entitled to consequential benefit according to law.

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