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indra Processors Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-19-2000

Reported in : (2000)(122)ELT519TriDel

Appellant : indra Processors

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellants are manufacturers of man-made fabrics who manufacture their products using hot air stenter and steam. They are working under Compounded Levy Scheme under Rule 96ZQ read with Section 3A of the Central Excise Act. They filed the required declaration under Independent Textile Processors Annual Capacity Determination Rules, 1998 for the purpose of determination of annual capacity of production.

The annual capacity was determined by the Commissioner of Central Excise. Their factory remained closed from 16-12-98 to 23-12-98 for which period they applied for abatement of duty under Sub-rule (7) of Rule 96ZQ of the Central Excise Rules. One of the requirements of this Rule was that an independent processor whose factory remained closed for a continuous period of not less than 7 days and who wanted to claim abatement of duty on account of that fact must inform the Assistant Commissioner the closure of his stenter at least 3 days prior to the date of closure. In the case of the appellants, according to the lower authority, this requirement was not fulfilled as the intimation of closure was given by them only one day prior to the date of closure. On this ground, the

Commissioner of Central Excise rejected the appellants' claim for abatement of duty. The appeal is against this order of the Commissioner.

2. I have carefully examined the impugned order and connected records.

The appellants, who are not represented today, have requested for adjournment of hearing as per their telegram which has come on record today. Having regard to the facts and circumstances of the case, I think the appeal can be disposed of after hearing the DR today itself.

3. The impugned order was passed without issuing any show cause notice to the appellants, without giving any opportunity of hearing to them and without proper application of mind to the appellants' claim for abatement in the light of the provisions of Rule 96ZQ(7). This is quite apparent on the face on the record. Sub-rule (7) of Rule 96ZQ lays down the requirements to be fulfilled by an independent processor who claims abatement of duty for the period of non-operation of hot air stenter.

The Rule presupposes that the party should be given a reasonable opportunity to satisfy the authority that they have fulfilled the necessary requirements of the Rule. In other words, the above Sub-rule contemplates a personal hearing. In this view of the matter, I have to hold that the Commissioner, by passing the impugned order, has acted in breach of the basic requirement of the above sub-rule. The grounds raised in this behalf by the appellants in the memorandum of their appeal have to be sustained. I, therefore, set aside the order of the Commissioner and allow this appeal by way of remand, with a direction to the adjudicating authority to take a fresh decision after due consideration of the submissions in the appellants' application for abatement and after giving a reasonable opportunity of personal hearing to them.

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