SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Commissioner of Central Excise Vs. Suzuki Processors

Commissioner of Central Excise Vs. Suzuki Processors

SooperKanoon Citation : sooperkanoon.com/19012

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-28-2000

Reported in : (2000)(122)ELT638TriDel

Appellant : Commissioner of Central Excise

Respondent : Suzuki Processors

Judgement :

1. By order-in-appeal No. 312(KDT)CE/JPR-II/2000, dated 28-3-2000, Commissioner (Appeals) set aside the penalty imposed on the respondent by the adjudicating authority. Revenue challenges this order passed by the appellate authority. Short facts necessary for the disposal of the appeal are as follows : Respondent is a job worker doing work on grey fabric supplied by the traders. He was paying duty on the materials worked upon by him on the basis of the value of grey fabrics declared by the trader. Subsequently it has come out that the trader was mis-declaring the value fixing it at a lower rate. Thereupon, the department issued show cause notice to the respondent for realising the differential duty.

After hearing the respondent, the job worker, the adjudicating authority fixed the correct price of the grey cloth supplied by the trader and found that differential duty claimed in the show cause notice was payable by the assessee. Accordingly, differential duty of Rs. 20,434/- was directed to be paid for the period from 6-7-96 to 4-12-96. Assessee, the job worker, was imposed a penalty of Rs. 5,000/- as per Rule 173Q of the Central Excise Rules and also directed to pay a sum equal to the duty alleged to have been evaded under Section 11 AC of the Act.Ujagar Prints

Etc. Etc. v.Union of India and Ors. [1989 (39) E.L.T. 493 (S.C.)], their Lordships observed "If the trader, who entrusts cotton or man-made fabric to the processor for processing on job work basis, would give a declaration to the processor as to what would be the price at which he would be selling the processed goods in the market, that would be taken by the Excise authorities as the assessable value of the processed fabric and excise duty would be charged to the processor on that basis provided that the declaration as to the price at which he would be selling the processed goods in the market, would include only the price or deemed price at which the processed fabric would leave the processor's factory plus his profit". In the instant case, assessee paid duty on the basis of the declaration given by the trader regarding the value of the grey fabric. Department has no case that the assessee suppressed the value of the grey fabric. It was the trader who did it. If the trader showed a lesser value, the job worker cannot be penalised or imposed penalty for the misdeeds of the trader. On coming to know of the actual price of the grey fabric given by the trader for job work, the assessee, job worker, paid the differential duty. He cannot be penalised for the wrong declaration made by the trader. In this view of the matter, we do not find any ground for interfering with the order passed by the Commissioner. It, therefore, follows that the appeal filed by the Revenue is devoid of any merit. It is, accordingly dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com