

Commissioner of Central Excise Vs. A.K. Spintex Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-27-2000

Reported in : (2001)(127)ELT552TriDel

Appellant : Commissioner of Central Excise

Respondent : A.K. Spintex Ltd.

Judgement :

1. The Respondents are the processors of man made fabrics. They process such fabrics on job work basis for the Merchant manufacturers. On a visit to the factory premises by the Central Excise Officers, it was observed that the grey fabric sent by M/s. Ratnagiri (I) Ltd. were processed by the appellant and sent to the Merchant manufacturers under their invoice on payment of duty. From the invoice it came to notice that the assessable value shown therein in respect of processed man made fabrics was lower than the one shown in the declaration filed by the traders under Notification No. 27/92-(N.T.), dated 9-2-1999. The proceedings were initiated against the appellants which culminated in Deputy Commissioner of Central Excise passing an order dated 10-3-1999 in which inter alia he imposed a penalty of Rs. 5,000/- on the appellants under Rule 173Q and a penalty of Rs. 2,04,060/- equal to the duty determined under Section 11 AC of the Central Excise Act, 1944.

2. The appellants filed an appeal before the Commissioner (Appeals), Jaipur. The Commissioner (Appeals) in his order dated 1-6-2000 set aside the aforesaid amount of penalty imposed on the appellants. The Commissioner (Appeals) in his

order observed that Notification No.27/92-(N.T.), dated 9-10-1992 nowhere casts any responsibility on the job worker to get the prices declared by the traders verified before declaring the same to the Department and paying duty on the prices so declared. The Commissioner (Appeals) relied on the decision of the Tribunal in the case of Omkar Textile Mills Ltd. v. CCE -1999 (107) E.L.T. 787 (Tri.) and observed that the adjudicating authority has failed to establish any fraud, collusion, wilful suppression of facts etc. with intent to evade payment of duty and consequently allowed the appeal of the party.

3. The Revenue is in appeal against the above order of Commissioner (Appeals). I have heard Shri V.M. Udhoji, JDR for the appellants and Shri K.K. Anand, Advocate for the Respondents. It is contended in the Revenue appeal that the party had processed the fabrics supplied by the traders and had undertaken to discharge duty liability on behalf of them. Hence, they were liable for duty and penalty which had arisen due to suppression of facts or mis-declaration on their part. It is further contended that as per the provisions of Section 11 AC of the Central Excise Act, 1944, imposition of penalty equivalent to the duty arisen as determined under Section 11A(2), is mandatory. It is also contended that the Commissioner (Appeals) has no authority or discretion under the law to set aside the penalty imposed particularly when he has upheld duty evasion pertaining to the application of extended period under Section 11 A. The Id. Advocate for the Respondents on the contrary has relied on the following decisions of the Tribunal, in which the appeals of the same appellant Commissioner have been dismissed on the similar grounds.

(1) Final Order No. 690/2000-A, dated 28-8-2000 [2000 (122) E.L.T. 638 (T)] - CCE, Jaipur-II v. Suzuki Processors.CCE, Jaipur-II v. Anant Syntex (P) Ltd. 4. In the above decision, it is observed that the Department has no case against the assessee/processor that he suppressed the value of the grey fabrics. It was the trader who did it. If the traders showed a lesser value, the job worker cannot be penalised or imposed penalty for the mis-deeds of the traders. On coming to know of the actual price of the grey fabrics given by the trader for job work, the assessee job worker paid the difference of duty. He cannot be penalised for the wrong declaration made by the trader.

5. Following the ratio of the above cited decisions, the appeal is dismissed as devoid of any merits.

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