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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-23-2000

Reported in : (2001)(73)ECC243

Judge : J Balasundram, S T G.R.

Appellant : Shree Narayan Textile Mills and

Respondent : Cce

Judgement :

1. In the impugned order, the Collector observed that "In view of the discussion above, no duty is chargeable from M/s. Vipul Traders and other firms of Shri Babubhai Shah and M/s. Pooja Fabrics and other firms of Shri Prakash Shah. The Collector also imposed the penalties of Rs. 5 lakhs on M/s. Shree Narayan Textile Mills Under Rule 173Q(1), Rs. 2 lakhs on Shri Panchman Narayan, partner of M/s. Shree Narayan Textile and Rs. 50,000 each on S/Shri Babubhai R. Shah and Prakash Bhai R. Shan Under Rule 209." Being aggrieved by this order, the appellants have filed captioned two appeals.

2. The facts of the case in brief are that M/s. Shree Narayan Textiles Mills, the appellants in this case are engaged in the processing of man made fabrics. During the material time man made fabrics were exempt from basic excise duty. However it was chargeable to duty under Additional Duty of Excise (Goods of Special Importance) Act, 1957. The Central Excise Officers visited the factory of the appellants on 22.6.89 and found fabrics measuring 18,484 metres pertaining to lot

No.36/100, 98/99 and 103 short. During inspection of the premises, the Central Excise Officers also noticed that the processed man made fabrics measuring 14,921.25 metres were accounted for in RG-1 register by pencil. The statement of Shri Panchman Narayan, partner of the firms was recorded on 21.6.89. When asked to explain the shortage, he stated that it was due to clerical mistake; that the said fabrics were not recorded on 21.6.89.

3. The Officers also visited the premises of Shri Ram Folding and found that 18,027.05 metres of processed man made fabrics were lying in the said premises. The Statement of Shri Dinesh Bhai Patel proprietor of the firm was recorded on 22.6.89. He stated that the said fabrics pertained to M/s. Vipul Traders. He also stated that he was receiving the fabrics duly processed directly from different process houses at Ahmedabad. The Officers then visited the premises of M/s. Vipul Traders and seized 33,465 metres of processed man made fabrics. They recorded the statement of the partner of M/s. Vipul Traders, Shri Babu Bhai alias Nanu Bhai. Shri Babu Bhai in his statement stated that he did not keep any stock register in respect of the goods lying in his shop; that the goods are delivered in loose conditions from the processors and the same are sold after getting them packed by the folders; that he did not submit any return to the excise department; that his fabrics are processed by M/s. Shree Narayan Textile Mills, M/s. Jag Fashion Processors and M/s. Jagdish Processors; that he indicated the break up as Jagdish Processor 30%, Shri Narayan Textile Mills 40% and Jag Fashion Processors as 30%. The work sheets were prepared by the officers, he checked them and signed them as correct.

4. Business premises of M/s. Pooja Fabrics was also searched by the Officers and the statement of Sh. Prakash Bhai Raman Lai Shah, proprietor was recorded. He stated that the man made fabrics mentioned at serial No. 10 and 11 were received by him from M/s. Shri Narayan Textile Mills without payment of duty; that during the course of panchnama, Shri Shah stated that he was mostly getting the fabrics from three processor houses as above. On the basis of the detailed scrutiny of the purchase invoices, account books of M/s. Pooja Fabrics and M/s.

Dinesh Textile, the department alleged that M/s. Shree Narayan Textile Mills processed 1,68,620 metres of fabrics sent by M/s. Pooja Fabrics and 6,53,565 metres sent by M/s. Dinesh Textiles and on the basis of difference in lenier metres, it was alleged that the appellants cleared 3,26,191 metres of processed man made fabrics without payment of duty.

5. The statement of Shri Panchman Narayan was also recorded on 1.12.89.

In this statement he denied the allegations of both the merchant manufacturer. He stated that grey fabrics received from both the merchant manufacturers had been entered in lot register and D-3 declaration had been filed. For the other goods, he expressed his inability to accept the receipt of the goods in process houses. He also disagreed with Shri Nanu Bhai's deposition regarding 40% fabrics being cleared without payment of duty.

6. A SCN was issued to the appellants asking them to explain as to why the duty should not be demanded from them and why a penalty should not be imposed on them. During adjudication proceedings, cross-examination of the departmental officers was conducted. However, after hearing the submissions made and evidence adduced, the Collector imposed penalties as indicated above. The Collector also ordered confiscation of fabrics seized from the factory of the appellants and allowed it to be redeemed on payment of fine of Rs. 5000.

7. Shri K.K. Anand, Ld. Advocate submits that the entire case of the department is based on the statement of the co-noticee without any corroborative evidence; that there was no evidence brought on record to show that the appellant clandestinely removed man made fabrics without payment of duty. Ld. Counsel submits that it is well settled law that to establish the charge of clandestine removal, corroborative and independent evidence has to be brought on record to sustain such charge; that in his statement the partner of the firm clearly stated that no goods were cleared without payment of duty; that the department assumed alleged clandestine clearances on the basis of certain documents, such as purchase bills of grey fabrics, sales bills of the merchant manufacturers; that these documents are not the documents of the appellants and, therefore, they cannot be used against the appellant; that no evidence has been brought on record that the appellant cleared

40% of the fabrics in respect of M/s Vipul Traders and certain other quantity in respect of M/s. Pooja Fabrics and Dinesh Textile; that this method of calculation was fallacious and unacceptable.

8. Ld. Counsel submits that the appellants were not keeping stock register nor were they filing any return nor did they remember the exact quantity; that in these circumstances, it was not proper for the department to demand duty on some assumed clearances. Ld. Counsel submits that Shri PR. Shah whose statement has been relied upon by the department for computing the quantum of duty was not definite about the actual processors through whom he got the processing done; that rough percentage was given by Shri PR. Shah which has been taken without any corroborative evidence for computing duty amount.

9. Ld. Counsel submits that on identical facts and circumstances and evidence a SCN was also issued to M/s. Bal Krishan Textile (P) Limited; that in this SCN, the same statements of Shri PR. Shah were relied upon; that cross-examination was also conducted in the case of M/s. Bal Krishan Textile (P) Limited; that it was strange that the Commissioner in that case accepted all their submissions which were identical to the submissions of the appellant in the present case; that the Collector dropped the demand against M/s. Bal Krishan Textile (P) Limited. In support of his contention, Ld. Counsel produced a copy of the Final Order No. C-H/3027/98-WZB dated 30.12.98 stating that this Tribunal upheld the order of the Collector. Ld. Counsel submits that in the case of M/s. Bal Krishan Textile (P) Limited, the same adjudicating authority took a different view in favour of the assessee.

10. Regarding imposition of fine and penalty on the appellant as well as on the partner of the firms, Shri Panchman Narayan, Ld. Counsel submits that the Hon"ble Delhi High Court in the case of M/s. Pioneer Silk Mills held that the penal provisions under Central Excise Rules could not be extended to the provisions of Additional Duty Excise under the Additional duty of Excise (Goods of Special Importance) Act, 1957. He, therefore submits that there is neither a case for demand of duty nor a case for confiscation of the goods or imposition of penalty. He, therefore prays that the two appeals may be allowed.

11. For the department, Ld. DR submits that the appellants have relied upon this Tribunal's final order dated 30.12.98. He submits that in paras 3, 4 and 5 of the order, this Tribunal observed as under: 3. After hearing the departmental representative, we do not find any basis to interfere with the findings of the Collector. RR.. Shah's statement itself does not clearly indicate that he received any quantity of fabrics after processing from the respondent without payment of duty. He does refer to some shortage, but from this it is not clear whether the goods were not delivered back to him or were delivered without payment of duty. Considering that the fabrics belonged to him, it is surprising that there should be shortage. No man would willingly give up his fabrics and lack of explanation on this point is in the respondent's favour. In any case, RR. Shah's statement by itself is not categorical or even suggestive, that the respondent cleared fabrics without payment of duty. Further, the Collector's finding that RR. Shah himself said that, in view of the matter being old, he was unable to give details of the quantity of fabrics and the details of process undertaken on the fabrics has not been questioned.

4. On the other hand, the Collector's findings that scrutiny of the respondent's records does not reveal any irregularity, and that the investigating Superintendent has testified during her cross-examination that there was no evidence to indicate any removal of fabric without payment of duty have not been challenged. We see no reason to interfere.

12. Ld. DR submits that against these findings in the present case are entirely different. He submits that the Collector in his findings in para 1 and at page 29 observed that "It is observed that Shri Babu Bhai's statement dated 29.11.89 and Shri Prakash Bhai's statement dated 7.12.90 had very clearly specified the quantities of processed fabrics cleared by M/s. Shree Narayan Textile and others without payment of duty and it is he, who had actually prepared the worksheet indicating the actual percentage of total processed fabrics which were received from different processors including the party." The Collector further observed that he categorically admitted in his above statement that for all these quantities of fabrics he does not possess any documentary evidence showing their duty paid nature. The worksheet prepared by him showing the actual percentage of fabrics cleared from three different mills/processing houses without payment of duty was

enclosed with the statement as above. Analysing the piece of evidence, the Collector observed that it would be only logical to conclude that the actual percentage of fabrics cleared without payment of duty and without any gate pass from the appellants' mills is 40% of the total quantity of fabrics received by M/s. Vipul Traders from the appellants. Ld. DR drew our attention to para 1 of page 36 of the Order-in-Original in which it has been held that "Both the merchant Traders extensively referred to their own accounts and the same was meticulously verified by the officers and both had endorsed the worksheets and annexures showing the quantum of non-duty paid fabrics. The measure of authenticity of accounts maintained by Shri Babulal will be evident from the fact that Shri Babulal in his statement dated 1.7.89 even furnished exact quantity of semi-processed fabrics lying with the different processors including the appellants." Ld. DR read copiously from the findings of the Collector and submitted that the evidence in the present case is entirely different from the one cited and relied upon by the appellants. Ld. DR, therefore submits that the demand for duty may be confirmed.

13. On the question of imposition of penalty, confiscation of the fabrics, Ld. DR reiterates the findings of the Collector.

14. Heard the rival submissions. Perused the evidence on records and findings of the Collector in the Order-in-Original and the order passed by the West Regional Bench of this Tribunal relied upon by the appellants. We find that the facts brought in the case of Bal Krishan Textile (P) Limited are different from the facts of the present case and, therefore reliance placed on the decision of the above case is misconceived and the present case is clearly distinguishable from the case of M/s. Bal Krishan Textile (P) Limited on the basis of the facts and their analysis as brought out by the Ld. DR. On careful consideration of the submissions made by both sides, we find that insofar as the demand for additional duty of excise is concerned, the department has been able to make out a case. We, therefore do not see any reason to interfere with the impugned order in so far as the demand of duty is concerned.

15. In so far as the imposition of penalty and confiscation of goods is concerned, we note that the High Court in the case of Pioneer Silk Mills v. Union of India held

that the penal provisions under the Central Excise Rules should not be extended to the Additional Duty of Excise under the Additional Duty of Excise (Goods of Special Importance) Act, 1957. In this view of the matter, we set aside the order confiscating the goods and imposing the penalty. The appeals are disposed of in the above terms.