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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-15-2001

Appellant : Hari Om Processors

Respondent : Commissioner of Central Excise

Judgement :

1. After having heard both sides on the stay application we have, with their consent, taken up the appeal itself for disposal, after waiving deposit.

2. The appeal is against the order of the Commissioner (Appeals) confirming the order of the Assistant Commissioner imposing a penalty of Rs. 62,05,000 under Rule 96ZQ.3. The appellant was a processor of textile fabrics and was governed by the provisions of Rule 96ZQ, which requires periodical payment by the processor of the amount determined upon its annual capacity in accordance with the rules framed for the purpose. Sub-rule (3) required payment by the processor of the entire duty payable for the calendar month by the 15th of the month. After its amendment in 1st March, 2000, which requires half of the amount to be paid by 15th and the remaining to be paid by the end of month. The appellant was therefore required to pay every month, in accordance with the rules, a sum of Rs. 7.5 lakhs up to February, 2000 and thereafter as a result of the change in the rates, Rs. 10 lakhs every month.

4. It is not in dispute that the appellant did not adhere to this time limit during the period from May, 1999, a month after it commenced production until April, 2000 when, it is stated, it close down, it did not pay in a single the amount payable

within the period specified. The explanation tendered is that this delay was due to shortage of funds.

It was entirely upon the appellant's violation that it chooses to enter into the process of manufacture. On being asked, the representative of the appellant is not able to say that the appellant's other affairs are also badly affected by lack of funds. He is unable to deny that the appellant's personal and other business payments were made without any delay. The fact that the appellant continued to delay payment even after receiving the first notice in December, 1999 and the second notice in April, 2000.

5. The representative appellant cites the decision of the Tribunal in Visen Fabrics Vs. CCE in appeal E/376, 377/2000. In that case, considering that the delay was marginal and on a couple of occasions on account of internal problems, the Tribunal reduced the penalty.

6. We are satisfied that there was no wilful intent not to pay duty.

This is clear from the fact that the appellant did make up the shortfall later. For example, in August, 1999 it made up the short fall in payment that has been caused earlier. The fact that the appellant had closed down its business in May, 2000 also lend support to the claim of financial hardship. Accordingly, we think that a reduction of the penalty is called for and reduce it to Rs. 31 lakhs.