

Nirav Textile Processors Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-29-2001

Reported in : (2002)(148)ELT838Tri(Mum.)bai

Appellant : Nirav Textile Processors

Respondent : Commissioner of Central Excise,

Judgement :

2. The appeal is against the order of the Commissioner confirming the demand for duty issued to the appellant of Rs. 18 lakhs, imposition of penalty of the same amount under Rule 96ZQ(5)(ii), and demanding interest. There is no ground in the appeal questioning the liability to duty or to interest. The counsel for the appellant confirmed that the appeal was limited to imposition of penalty.

3. The appellant is a textile processor its liability to pay duty had been determined under the provisions of the Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998. The penalty has been imposed on the ground that the appellant did not pay, in August, September and October 1999, the duty which it was required to pay.

5. Counsel for the appellant does not deny that the duty in question was not paid. He however contents that since the determination of the duty payable was provisional, penalty cannot be imposed for that failure. He relies upon the decision of this Tribunal in S. Patnaik vs.

Commissioner of Customs 2000 (118) ELT 502. In that decision, the Tribunal was concerned with the duty demanded, penalty imposed on M/s.

HMG Industries Ltd. and its director S. Patnaik. The order impugned before it had found that the importer deliberately short paid duty on the industrial chemical imported by it and accordingly imposed penalty.

The Tribunal noted that the goods had been cleared provisionally, pending their classification. Therefore the order of the Commissioner finalising the classification and at the same time imposing penalty could not be maintained.

6. The fact before us are entirely different. The duty has been determined in accordance with the provisions of the rules, which, at the relevant time, provided an exception to the general rule prevailing then that duty must not be paid on manufactured goods prior to their clearance. The rules provided the facility of paying the duty once a month. The fact that the duty payable was determined to be provisional is no answer. In the case of goods provisionally to assessed duty, such duty has to be paid before they can be cleared. In such a situation, if there is a provision for penalty in not paying duty, that provision will come into play if the duty is not paid before the prescribed date.

7. On merits therefore there is no justification to say that penalty should be imposed. The counsel for the appellant requests for leniency, on the ground that duty was not paid on account of financial hardship.

We are unable to understand how, when the assessee had enough money to run its factory, and buy chemical and other material required to process the fabric, which it would not have returned to the supplier without recovering the money due from them for such process, financial hardship provided a cover for not paying the duty to government. The explanation offered that suppliers of chemicals have not been paid, and the factory was not working capacity it hardly convincing. There was no compulsion on the part of the appellant to manufacture goods liable to duty. If business was insufficient, the assessee could have stopped manufacture. We therefore do not find the claim of financial hardship an acceptable ground for leniency.

