Mini Textiles Vs. Commissioner of Central Excise,

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SooperKanoon Citation : sooperkanoon.com/24756

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-31-2001

Appellant : Mini Textiles

Respondent : Commissioner of Central Excise,

Judgement :

1. When this application was called up the applicants were not present nor represented. There was no application for adjournment. We therefore proceed to decide this application on the basis of documents on record.

2. The appellants were operating under the provisions of Hot Air Stenter Independent Textile Processor Annual Capacity Determination Rules, 1998. Their liability was computed at Rs. 4,53,443/- per month.

During the period August, 1999 to January, 2000 the liability so fastened was Rs. 27,20,658/-. They had applied for abetment for the period 16/08/1999 to 15/03/2000 on the ground that their stenter was sealed. However, in a surprise check on 23/04/2000 it was found that during that period the assessee had cleared unstentered fabrics. In terms of sub-rule 7(a) of Rule 96ZQ of the Central Excise Rules, 1944 the Commissioner denied the request for abetment as communicated to the assessee vide letter dated 24/10/2000. Subsequently show cause notice was issued seeking recovery of the duty not paid. The Commissioner confirmed the demand after hearing the assessee, citing the relevant provisions, and also imposed penalty of like amount in terms of Rule 96ZQ(5)(2) of the said Rules and further demanded interest. The assessee then filed an appeal and the present

application seeking waiver of pre-deposit of the duty confirmed and the penalty imposed.

3. The only claim in the appeal memorandum is that the provisions on which reliance was placed in the order dated 24/10/2000 came into existence on 31/03/2000 and therefore cannot apply to the earlier period during which the duty liability was incurred. We find this argument as not applicable on two grounds. Firstly that this order is not in appeal before us and secondly that on the date of show cause notice this provision was in existence.

4. We find that the applicants have failed to make out any case on merit. We have seen the plea of financial hardship. The documents placed on record are final accounts ending as on 31/03/1999. These accounts are not relevant on the date of application pleading financial hardship. We also find that the assessee is a proprietary unit and the proprietor's assets would also be chargeable. We therefore direct the applicant to deposit the entire duty confirmed in the instant proceedings within 8 weeks from the date of receipt of this order. On such deposit being made the requirement of pre-deposit of the penalty shall be waived and recovery stayed.