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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-27-2001

Appellant : Suntex Fabrics Pvt. Ltd.,rakesh

Respondent : Commissioner of Central

Judgement :

1. Out of 19 applicants before us, Suntex Fabrics Pvt Ltd, is the processor of textile fabrics. In the order impugned in the appeal, the Commissioner has found that it short paid duty totalling Rs. 58.62 lakhs on the fabrics processed by it, demanded duty and imposed a penalty of equivalent amount on it and of Rs. 2.00 lakhs on Sureshkumar Chug, its director. He has offered the processor a fine of Rs. 3.00 lakhs for redemption of the plants, machinery etc which he has ordered confiscation. He has imposed penalties under Rule 209A as listed in Annexure on the persons who gave the grey fabrics to the processor for processing.

2. The show cause notice breaks up the demand of duty into four elements. Out of this payment of duty totalling to Rs. 5.48 lakhs approximately on the ground that the manufacturer illicitly removed fabrics processed by it, is not disputed at this stage by its counsel.

The next demand of Rs. 41.25 lakhs approx, flows out of entries in a pocket diary seized from the residence of Sureshkumar Chug, the director. In his statement, which was recorded two days after the seizure of the diary, Chug said that the diary related to purchase and sale of processed fabrics in 1994 by K.D. fabrics, a firm of which he was the owner. The Commissioner has not accepted this version

on the ground that there are no records such as receipts, invoices etc to corroborate the claim of sale and purchase and on the further ground that Chug was unable to explain even the elements of details of the diary such as who had processed the fabrics.

3. We agree prima facie that Chug's claim that the entries in the diary related trading of fabrics is at this stage hard to accept. We note his claim that he could not produce any corroboration to the entries in the diary because of the transactions were in cash. However, the claim is not supported by evidence which could easily have been obtained, of Sun Silk Mills, and Varun Textile Mills, who he says to have sold major portion of the fabric to him. We must, however, also accept that the entries in the diary relate to fabrics processed and cleared by Suntex Fabrics. Each page of the diary contained details of various amounts in two columns. These details appear to be insufficient to establish to the degree of probability required, evidence of removal of fabrics without payment of duty by the applicants. The Commissioner's conclusion with regard to this diary is, what appears to be, based entirely upon that the claim of Chug with regard to it was false, even accepting that to be so, it is insufficient to establish the claim.

4. The next count on which duty has been demanded of Rs. 11.90 lakhs is on the ground that 42 suppliers of grey fabrics to the applicant underdeclared the value of the fabrics that were supplied. The Commissioner finds without furnishing details in some cases, the value of the fabrics declared was lower than the value at which the manufacturer of the fabrics cleared them. In other words, the manufacturer had said that they did not include, in the cost of the fabrics, the expenses incurred by them for obtaining finances to buy the fabrics. The contention of the counsel for the applicant that, assuming that the amounts are to be payable, the extended period of limitation invoked in the show cause notice will not apply on the facts that the show cause notice relied upon has considerable merits. The period for which the duty is demanded in the show cause notice is April 1996 to May 1998. No clear reasons are offered in the notice for invoking the extended period except to say that it was the duty of the manufacturer to verify the correctness of the value declared by the supplier.

5. It is further contended that on these facts, penalty is not imposed especially with regard to the factor that the applicant has deposited Rs. 13.70 lakhs voluntarily.

6. The contention on behalf of the 17 suppliers of the grey fabrics on whom penalties have been imposed, is that since the notice itself is barred by limitation, penalties cannot be imposed on them. Whether that is going to be the fate of the notice will not be decided at this stage. There are admissions by suppliers of the grey fabrics that they deliberately misdeclared the cost of the fabrics that they sent to the processor. On the face of it therefore penalty is imposable on them.

7. Having regard to the foregoing discussions, we consider it to ask Suntex Fabrics to deposit, in addition to what has already been deposited, Rs. 5.00 lakhs. Upon such deposit, we waive deposit of the duty demanded from it, penalty imposed on it and upon Sureshkumar Chug.

We consider it appropriate to ask each of the 17 suppliers of the grey fabrics to deposit 50% of the penalties imposed on them. On such deposits, we waive deposit of the remaining penalties and stay their recovery. Deposits to be made within a month from the receipt of this order.

9. Pending disposal of the appeals, applicant be permitted to utilise its plant and machinery etc for manufacture subject to the condition that it will not alienate.

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