Radha Mohan Processors, Vs. Commissioner of Central Excise,

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SooperKanoon Citation : sooperkanoon.com/25337

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-31-2001

Appellant : Radha Mohan Processors,

Respondent : Commissioner of Central Excise,

Judgement :
1. Appeals taken up for disposal with the consent of both sides, after waving deposit.

2. Each of the appellants is a textile processor, and duty had been demanded from them and penalty on them, on the ground that they did not pay the duty determined in terms of Hot Air Stentor Independent Textile Processors Annual Capacity Determination Rules, 1998.

3. Each of the appellants contended before the Commissioner that in determining the capacity of the stentor, the rail length of the gallery which was part of the stentor has to be excluded. The Commissioner has held that these galleries cannot be excluded prior to 1.3.2000, on which date the rules were amended to explicitly provided for their exclusion. He had following the decision of the Tribunal in C.M. Paints (Pvt) Ltd v. CCE 2000 (12) Elt 829, held that during the period prior to this date rail length of the gallery has to be included. That decision is no longer good law, having been overruled by the larger bench in its decision in Sangam Processors Bhilwara Ltd v. CCE 2000 (126) ELT 679. Applying the ratio of this decision, the rail length of the gallery will not be taken into account in determining the capacity of the stentor.

4. The appeals are accordingly allowed and the impugned orders set aside.