

Jimtex Pvt. Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-28-2001

Appellant : Jimtex Pvt. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The predeposit of penalty of Rs. 12 lakhs in both cases is waived and recovery thereof stayed and the appeals themselves are taken up for hearing with the consent of both sides as the issue involved falls within a very narrow compass.

2. The appellants herein who are process of fabrics are required to pay duty on process fabrics by a particular date They paid duty but beyond the dates fixed in terms of Rule 96ZQ of the Central Excise Rules, 1944. In one case there was delay of 4 days in payment of duty while in other case there was delay of 15 days. For the late payment, penalty has been imposed. It is the contention of the appellants that the duty demand which was paid beyond the stipulated date arises on processing fabrics using gas fired stenter to which the compounded levy scheme does not apply although they used hot air stenter also in their factory. However, the penalty in the present cases arises out of delay in payment of duty on factories processed using gas fired stenter and not hot air stenter. He submits that no penalty at all can be imposed the scheme does not cover those processes using gas fired stenter. Ld.

DR. draws my attention to the fact that the impugned order does not discuss merits as to imposition of penalty but has only considered the aspect of non-

compliance of statutory requirement of Section 35F of the Central Excise Act, 1944.

3. On considering the submissions made on both sides and nothing that after receipt of interim order directing prdeposit of entire penalty by the Commissioner (Appeals), the applicants filed application for modification but were not heard thereon, nor were they heard before the dismissal order was passed, I see no option but to set aside the impugned order and remand the matter back to the Commissioner (Appeals) for fresh decision in accordance with law, after first hearing the application filed under Section 35F of the Central Excise Act, and then proceed to dispose of the appeals themselves.

4. The appeals are thus allowed by remand after setting aside the impugned order.

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