

Commissioner of Central Excise, Vs. Om Finishers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-2002

Reported in : (2002)(142)ELT396TriDel

Judge : S T G.R., P Bajaj

Appellant : Commissioner of Central Excise,

Respondent : Om Finishers

Judgement :

2. The stay application is dismissed being without merit. With the consent of learned JDR, we proceed to decide the appeal on merits. None has come present on behalf of the respondents, in spite of service of notice.

3. This appeal has been filed by the Revenue against the impugned order-in-appeal of the Commissioner (Appeals) dated 29-6-2001 vide which he has reversed the order of the adjudicating authority and allowed the benefit of exemption Notification No. 65/87, dated 1-3-1987 to the respondents.

4. The respondents are engaged in the processing of man-made shawls.

They had been clearing the shawls as ready to use articles without sewing or other working under exemption Notification No. 65/87. The show cause notice, however, was served on them by alleging that they were, in fact, engaged in the processing of man-made fabrics of 180 cms width i.e. double the width of 90 cms. of shawl by leaving a fringe and the processed fabrics were cut into two pieces having equal

width.

Those shawls cut width wise were then sold and as such were subjected to the process of whipping before being sold. Therefore, they were not entitled to the benefit of above said exemption notification. They were called upon to pay the duty of Rs. 2,41,612.80. The adjudicating authority confirmed the duty, although the respondents agitated before him that the shawls which they were clearing, were in ready to use conditions without stitching/hemming/whipping. The Commissioner (Appeals) through the impugned order had accepted the version of the appellants and reversed the order-in-original.

5. The bare perusal of the impugned order shows that there is no evidence on the record to indicate that what was processed by the appellants, was not shawls in ready to use conditions and required any further stitching/hemming/whipping. They were processing double width shawls which were divided by a fringe and on cutting of which, two shawls of equal width could be obtained without requiring any further stitching/hemming/whipping. The learned JDR has not been able to assail these findings of the learned Commissioner (Appeals) on any ground before us. Therefore, we do not find any sufficient ground to disagree with the same. It was for the Revenue to establish for denying the benefit of exemption Notification No. 65/87 to the respondents that the shawls processed by them were not ready to use but required any further processing before becoming marketable. But they had failed to discharge this burden. The Commissioner (Appeals) in our view has rightly allowed the benefit of exemption Notification No. 65/87, dated 1-3-1987 to the respondents. Therefore, the impugned order passed by him is perfectly valid and does not suffer from any legal infirmity.

5. In view of the discussion made above, we do not find any merit in the appeal filed by the Revenue and the same is ordered to be dismissed.

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