

**Alwar Processor (P) Ltd. Vs. Commissioner of Central Excise,**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Feb-13-2002

**Reported in :** (2002)(81)ECC347

**Judge :** B T K.K.

**Appellant :** Alwar Processor (P) Ltd.

**Respondent :** Commissioner of Central Excise,

**Judgement :**

1. The appellants manufacture processed cotton/man made fabric falling under chapter sub-heading Nos. 5507, 5208, 5209, 5513.29 and 5514.29.

Their factory premises were visited by the Central Excise Officers of Alwar Division. On physical verification, 15287.80 meters of processed fabrics valued at Rs. 3,21,044/- were found in excess than what was recorded in their RG-1 register. The Officers further found 235 meter grey fabric (raw material) in excess than what was recorded in Form IV register. Both these goods viz. processed fabric and grey fabric were seized. Shri Rajendra Gupta, Authorised Signatory in his statement deposed that the excess finished goods were manufactured on 4-2-98 and 5-2-98 and the entries of the goods were not made in RG-1 register as the same were to be removed clandestinely without payment of duty. The Officers of Central Excise further searched the private godown near their factory on 9-2-98 which resulted into recovery of 20029.30 meters of processed cloth and 58622.40 meters of grey cloth (raw material).

These goods were also seized. Shri M.P. Baldi, Director of the appellants in his statement deposed that the quantity of fabrics mentioned in the documents recovered from the factory was received by them from their customers, out of which some of the quantity of the fabrics was kept in their private godown situated at the back side of the factory premises. He admitted that the challans/bills/papers recovered from their factory premises and the godown were genuine and the quantity mentioned in them were removed after processing without making entries in their statutory records and without paying Central Excise duty. He also stated that 58622.40 meters of grey cloth which was detained from the private godown on 9-2-98 was also included in the grey fabrics mentioned in the challans etc. recovered on 6-2-98. This statement of Shri M.P. Baldi, Director of the appellants was confirmed by Shri Prabhu Dayal, Clerk in his statement dated 4-3-98. On scrutiny of the documents recovered from the factory premises of the appellants, it was revealed that they had received 1,75,120.75 meters (shirting) and 41,866.05 meters (suiting) of grey/processed fabric for processing.

Out of this quantity, 38,325.00 meters (shirting) and 20,297.40 (suiting) of grey fabrics were found in private godown on 9-2-98. The remaining quantity of fabric i.e. 1,36,795.75 meters (shirting) valued at Rs. 23,25,527.70 and 21,568.65 meters (suiting) valued at Rs. 9,70,589.25 were removed clandestinely after processing without entering the same in the statutory records. Accordingly, the proceedings were initiated against the appellants which culminated in the Joint Commissioner of Central Excise, Jaipur passing an order dated 9-7-99 directing as per the particulars below :- (i) 15,287.80 meters processed fabrics valued at Rs. 3,21,044.00 seized from the factory premises on 6-2-98 are ordered to be confiscated under Rule 173Q. However, an option is given to the appellants to redeem the same on payment of a fine of Rs. 80,000/-.

(ii) 20,029.30 meters processed fabrics valued at Rs. 4,59,738.90 seized on 9-2-98 from the godown of the party are ordered to be confiscated under Rule 173Q. However, an option is given to the appellants to redeem the same on payment of a fine of Rs. 1.15 lakhs.

(iii) The demand of Rs. 4,48,238/- is confirmed on the party in respect of the goods clandestinely removed under Rule 9(2) read with Section 11A(2) of the Central Excise Act, 1944.

(iv) The deemed Modvat credit of Rs. 1,58,827/- availed by the party on 9-2-98 disallowed.

(v) A penalty of Rs. 4,48,238/- is imposed on the appellants under Section 11 AC of Central Excise Act, 1944.

(vi) A penalty of Rs. 50,000/- is imposed on the party under Rule 173Q of Central Excise Rules, 1944.

2. The party filed an appeal but the same is rejected by the Commissioner of Central Excise (Appeals), Jaipur vide his order dated 5-7-2000. He has however set aside the penalty of Rs. 50,000/- imposed on the party under Rule 173Q of Central Excise Rules, 1944.

3. This appeal is against the impugned order of the Commissioner of Central Excise (Appeals), Jaipur. I have heard Shri Bipin Garg, Id.

Advocate and Shri H.C. Verma, Id. JDR for the respondents. I have considered the submissions made before me. The Id. Counsel for the appellants is not disputing the facts as given in details in the order of the original authority. He, however, submits that the demand of Rs. 4,48,238/- on the alleged clandestine removal of 1,36,795.75 (shirting) and 21568.55 (suits) is not called for since there was no evidence of their clandestine removal. The Id. Counsel is further contending that the penalty of equivalent amount under Section 11AC also calls for reduction since the Tribunal in a number of decisions has held that notwithstanding the statutory provisions, the imposition of 100% penalty is not mandatory. It is observed from the records that Shri Rajendra Gupta, Authorised Signatory of the appellants, Shri M.P.Baldi, Director of the appellants and Shri Prabhu Dayal, Clerk in their statements dated 6-2-98, 9-2-98 and 4-3-98 respectively have confirmed that the quantity of fabrics mentioned in the documents recovered from their factory on 6-2-98 was received from the customer, out of which some fabrics were kept in the

private godown, It is also admitted that all the challans/bills/papers recovered from the factory premises were genuine and the fabrics were removed after processing, without making any entry in the statutory records and without payment of Central Excise duty. These inculpatory statements have neither been modified nor have been retracted till date and therefore there is no ground not to rely on them for the purpose of confirmation of differential amount of duty.

4. There is no other argument advanced with regard to reduction in the demand of duty. I also find no force in the argument that notwithstanding the provisions of Section 11AC for imposition of 100% penalty in the case of clandestine removal of the goods, the penalty should be reduced. The penalty could be reduced only for bona fide mistake or where -there are valid grounds calling for reduction. In this case, admittedly the appellants have clandestinely removed the processed goods without payment of duty from their factory premises and in my view the statutory provisions for imposition of penalty have to be pressed in full force. Consequently, I find no merit in this appeal and the same is accordingly dismissed.

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