

Jindal Polyster Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-23-2002

Reported in : (2003)(152)ELT228TriDel

Judge : S T G.R., P Bajaj

Appellant : Jindal Polyster

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal has been filed against the impugned order-in-original dated 18-4-2002 passed by the Commissioner of Central Excise vide which he had rejected the prayer of the appellants for the remission of duty on account of destruction of goods by natural cause i.e. fire.

2. The facts are not much in dispute. The appellants are engaged in the manufacture of polyester filament yarn. During the course of manufacture, spinning hard waste also arises. They filed an application for remission of duty in respect of 236000.77 kgs. of spinning hard waste of polyester filament yarn, destroyed in fire which took place in their factory premises on 6-6-1998. The intimation regarding the fire was lodged by them with the Asstt. Commissioner of Central Excise and the Superintendent Range vide letter dated 6-6-1998 received in their Offices on 8-6-1998. They also sent intimation about the fire to the SHO, Gulaothi on 6-6-1998. The Commissioner had rejected their claim on two grounds; firstly, there was delay of 40 and 65 minutes in sending the intimation to the fire

brigades at Bulandshahar and Hapur, respectively and secondly, the exact cause of fire could not be ascertained.

3. We have heard both sides. The learned Counsel has challenged the validity of the impugned order on the ground that the report was lodged with the fire brigades at Bulandshahar and Hapur without loss of much time and that the findings of the Commissioner that cause of fire could not be ascertained, and that there was no forming of lumps at the time of burning of the spinning hard waste of polyester filament, are without any tangible evidence/material on record and, therefore, the impugned order deserves to be set aside.

4. On the other hand, the learned SDR, has simply reiterated the correctness of the findings of the Commissioner.

5. From the record we find that it remains undisputed that the fire broke out in the factory premises of the appellants on 6-6-1998 at 13.50 hrs. They sent intimation about this at 14,30 hrs to the fire brigades at Bulandshahar and at 14.55 hrs at Hapur. This delay of 40 minutes and 65 minutes in sending intimation to these fire brigades at both these places could not be termed as inordinate. The observations of the Commissioner that if the intimation of fire had been sent in time to the fire brigades, the loss of goods could be avoided, are without any basis and material on record. According to the appellants, when the fire broke out in their factory premises, they and their employees became busy in saving of the other goods and they simultaneously also sent intimation to the fire brigades at both the above referred places, without loss of much time.

6. Regarding the cause of the fire, when the fire brigades reached at the spot and made an inquiry about the cause, the appellants told that it took place due to immense heat being summer season. The fire brigade authorities accordingly prepared the report. This very cause was disclosed by them in their letter dated 6-6-1998 which they sent to the Asstt. Commissioner and the Superintendent Range immediately after the fire. The letter was received in the Offices of both the Officers on 8-6-1998 as 7th was a Sunday. There was no delay on their part in sending intimation to the Excise Department. The Inspector of the Department visited the site on 3-11-1998 and prepared the list of the stock of the spinning hard

waste (copies of which are at pages 17 to 30 of the paper book on record). In those lists, the Inspector had nowhere doubted the cause of the fire as disclosed by the appellants. He did not record any findings that there was no formation of the lumps and that due to immense heat the goods i.e. Hard Waste of Polyester Filament Yarn, could not catch fire. Therefore, the observations of the Commissioner in this regard while disallowing the remission prayer of the appellants are without any basis and material on record. He himself did not visit the spot and as such he could not opine that there had been no formation of lumps at the time of destruction of the goods due to fire. No expert report also called by him to ascertain if the fire could not broke out due to immense heat in the month of June and goods in question could not catch fire on account of that much heat. His personal observations, without any tangible evidence on the record that fire could not take place due to immense heat as the goods were not highly inflammable and there was no lumps formation, cannot attach much credence. Moreover, he has not doubted the breakage of fire in the factory premises of the appellants. He has also not tried to ascertain the cause of fire other than one put forth by the appellants by getting the opinion of any expert. Therefore, there existed no cogent reason for the Commissioner to disbelief the version of the appellants that the fire broke out in the factory during the immense summer heat resulting in destruction of the goods. That being so, the impugned order passed by him rejecting the remission of duty claim of the appellants, cannot be sustained.

7. Under Rule 49 of the Central Excise Rules, once the assessee is able to establish the destruction or loss of the goods by natural cause, he is not liable to pay the duty in respect thereof. In the instant case, in our view, the appellants have been able to prove the loss of the goods due to fire which broke out suddenly due to immense heat and could be termed as an act of God. They are, in our view, entitled to the remission of the duty involved in respect of the goods destroyed/lost in fire, of the disputed amount.

8. The learned Counsel has also argued that even otherwise the duty could be claimed by the Department in respect of the goods only if those were consumed or utilized within the factory or outside the factory in view of explanation appended to Rule 49 read with Rule 9 of the Central Excise Rules. But this contention of the

learned Counsel cannot be gone into in the present appeal which has been preferred only against the order of the Commissioner rejecting the remission of the duty prayer of the appellants. The duty demand has been confirmed against them as is evident from the record and not disputed by both the sides by the Deputy Commissioner, after following the impugned order of the Commissioner rejecting the remission claim of the appellants.

Therefore, these arguments can be raised by the appellants before the competent authority at the time when they dispute the correctness of the order of the Deputy Commissioner, referred to above. In the present appeal, we have only to adjudicate the validity of the impugned order of the Commissioner rejecting the remission of the duty claim of the appellants. That order of the Commissioner as observed above cannot be legally sustained and deserves to be set aside.

9. In view of the discussion made above, the impugned order of the Commissioner is set aside and the appeal of the appellants is allowed with consequential relief, if any, permissible under the law.

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