

**Mahesh Inds. Ltd. Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/29412](http://sooperkanoon.com/29412)

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

**Decided On :** Nov-21-2002

**Reported in :** (2003)(106)LC536Tri(Mum.)bai

**Judge :** J Balasundaram, J T J.H.

**Appellant :** Mahesh Inds. Ltd.

**Respondent :** Cce

**Judgement :**

1. The Appellant is a job worker processing gray fabrics. A number of show cause notices were issued. The common allegation was that the assessee had not taken into account the fact of shrinkage in the fabrics after conversion. It was alleged that this had resulted in short levy. Total Duty amounting to Rs. 17,34,761.85 was demanded and it was alleged that the assessees were liable to penalty.

2. Before the Commissioner the assessee argued that the Proforma for declaration was to be made by Merchant Manufacturer, which did not provide for the fact of shrinkage. It was claimed that the fact of shrinkage was mentioned in the Quarterly Returns in the R.T. 5 format.

It was claimed that the Show Cause Notices were hit by limitation in as much as the Notices made on identical grounds earlier were pending disposal.

3. The Commissioner passed Orders. He held that shrinkage of the fabrics during the course of processing amounted to 'manufacturing expenses' and became

addable to the values in terms of the Supreme Court Judgment in the case of Ujagar Prints. He established suppression on the observation the this item of expenses was not entered in their declaration. He justified imposition of penalty relying upon the Gujarat High Court Judgment in the case of Maheshwari Mills Ltd. . In this belief he confirmed the duty of Rs. 17,34,761/- and imposed an equal amount of Penalty upon them. The appeal arises out of this Order.

4. Shri Prakash Shah submits that the valuation of the fabrics processed was not done by the assesseees in terms of the formula arising out of the Supreme Court Judgment in the case of Ujagar Print but that as per the price declaration signed by the Merchant Manufacturer the assessment was done at the price at which the traders were selling the goods in the wholesale market. This way, he claimed, that the assessable value was higher than that what would have been computed using the Ujagar Prints formula. As such he claimed that there was no question of any short levy. On limitation also he raised the arguments as were made before the Commissioner.

5. We have seen the declaration filed by the merchant manufacturer. The breakup shows the profit margin of the merchant manufacturer apart from the job charges paid. It is therefore to be accepted that the valuation of the fabrics assessment in the hands of processor was higher than that computed by the processor, in terms of the formula given in the Ujagar Prints Judgment. Therefore there would not be any question of short levy. This factual position was accepted by the Department in a later order made by the jurisdictional Dy. Commissioner in his order No. 601/2001 + 2002 dt, 24.5.2001.

6. Since we are allowing the appeal on merits the issue of limitation is not discussed.

7. On this analysis the impugned Order is set aside. The appeal is allowed with consequential benefits if any.