Premier Textile Processors Vs. Commissioner of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-10-2002

Reported in : (2003)(153)ELT154Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Premier Textile Processors

Respondent : Commissioner of C. Ex. and Cus.

Judgement :
1. These two appeals have the same issue. These are therefore disposed of vide this single order.

2. Both appellants are engaged in processing of fabrics. Rule 223A of the Central Excise Rules, 1944 provides for stocktaking of excisable goods to be conducted periodically. In the case of both appellants/ such stocktaking was conducted. The stocktaking covered not only the finished goods but also goods under process. In the case of both appellants/ while there was no discrepancy in the stock of finished product/ there were shortages in the stock of under process fabrics.

Show cause notices were issued seeking recovery of duty on fabrics so found short. It was also alleged that penalties were leviable under Rule 173Q and 223A of the Central Excise Rules. The Jurisdictional Commissioner adjudicated the notices after hearing the assessees. He confirmed demand of duty to the extent of Rs. 7,52/606.44 against M/s.

Premier Textile Processors and imposed a consolidated penalty of Rs. 1 lakh upon them. In the case of M/s. Dilkush Dyeing and Printing Works, the amount of duty confirmed was Rs. 7,30,287.70 and the penalty imposed was Rs. 7.5 lakhs. These two appeals are against these two orders.

3. As we have noticed above the proceedings commenced pursuant to stocktaking under Rule 223A. The subject rule requires stock to be taken of "excisable goods". This amounts to fully finished excisable goods stored in the BSR. The rule does not admit of stocktaking of fabrics under process. The proceedings in both the cases commenced on wrong appreciation of this rule and therefore become untenable.

4. Shrinkage is an accepted phenomenon in the processing of fabrics.

Once the goods are fully finished and entered in the RG 1 register and the department compares the length of grey fabrics and the length of finished fabrics there may be scope for alleging removal without payment of duty on the ground that the discrepancy is greater than what the fact of shrinkage would permit. In that case action under Rule 173Q may be initiated. But that action is misplaced when the goods are counted in terms of Rule 223A of the Rules.

5. Since the orders now impugned were passed under wrong appreciation of law they do not survive. The appeals are allowed with consequential relief, if any.