

Janki Processors Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-21-2003

Reported in : (2003)(156)ELT68TriDel

Judge : A T V.K., P Chacko

Appellant : Janki Processors Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal filed by M/s. Janki Processors Limited, the issue involved is whether the abatement of duty is available to them under Rule 96ZQ(7)(g) of the Central Excise Rules, 1944.

2. Shri K.K. Anand, learned Advocate submitted that the Appellants are independent processors processing man made fabrics; that they were assessed to Central Excise duty under Hot Air Stenter Independent Processors and Annual Capacity Rules, 2000; that they filed abatement claim for regularization of non-payment of duty for the period from 23-10-2000 to 1-2-2001; that the Commissioner allowed the abatement for the period from November, 2000 to January, 2001 and disallowed the abatement for the period from 24-10-2000 to 31-10-2000 on the ground that the month is to be taken as complete one calendar month and not a fraction of a month. The learned Advocate, further, submitted that the period of one month is required to be reckoned from the date of closure and in case the closure period is one month or more the assessee is not required to pay

duty under the provisions of Rule 96ZQ(7)(g); that as their factory was closed for a period more than one month the abatement is admissible to them for the entire period; the Department cannot segregate the period 24-10-2000 to 31-10-2000 on the ground that the factory was not closed during the entire month of October, 2000. He relied upon the decision of the Tribunal in the case of Mahalakshmi Enterprises v. CCE, New Delhi - 2002 (140) E.L.T. 143. Shri R.C.Sankhla, learned SDR reiterated the findings as contained, in the order impugned.

3. We have considered the submissions of both the sides. Rule 96ZQ (7)(g) provides that "where the claim for abatement by the independent processor is for a period of one month or more, he shall not be required to pay duty for that period in advance". It has not been disputed by the Revenue that the Appellants have filed the abatement claim for the period from 23-10-2000 to 1-2-2001. The stenter was sealed on 23-10-2000 and the seal was broken on 1-2-2001. It is thus apparent that the factory was closed for a period which is more than one month. In such circumstances, the provisions of Clause (g) will be applicable. There is no requirement of reading the period of one month as the calendar month as has been done by the Commissioner (Appeals) in the impugned order. Once the factory is closed for a period of one month or more, the provisions of the said clause will be applicable.

Accordingly, we allow the appeal.

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