Commissioner of Central Excise Vs. Omkar Textile Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-28-2003

Judge : A Wadhwa, S T S.S.

Appellant : Commissioner of Central Excise

Respondent : Omkar Textile Ltd.

Judgement :

1. This is Revenue's appeal against order of the Commissioner of Central Excise & Customs (Appeals), Ahmedabad vide which he has remanded the matter to the original Adjudicating authority with the following directions:- "I have gone through the facts of the case. The appellants were heard on 10-6-2002. It appeals that while fixing the APC in respect of the Stenters, the measurement of galleries had also been taken into consideration. However, as per the CEGAT Larger Bench's decision in the case of Sangam Processors Bhilwara Ltd., v. CCE, Jaipur, reported at 2001 (42) RLT 429 (CEGAT-LB), the galleries are not to be taken into account while computing production capacity of Stenter as it is not an equipment aiding the process of heat setting or drying of fabrics as contemplated by Explanation I to Rule 3.

Moreover, in the subject case one Stenter, which was dismantled and was not in operation in February, the duty has also been charged on the same. If these facts are taken into consideration, them, prima facie, there appears to be no liability against the appellants.

Since, the above contention of the appellant require verification, it will be only appropriate if, the proceedings are remanded back to the original authority. Even, the concerned Range Superintendent, vide his letter F. No. AR.VIII/Section 3A/ OTML/W1 dated 26-4-2002, had intimated that Harish Marked Stenter Machine No. 1 having 5 chambers installed in the factory of the appellants was sealed on 20-12-98 and was opened on 1-3-99.

In view of the above, the subject Order-in-Original is set-aside and case remanded back to the original authority, who will consider the above facts, after giving the appellants an opportunity of Personal Hearing and pass necessary order." 2. The Revenue ground of appeal is that they have not accepted the Tribunal's decision in the case of M/s. Sangam Processors Bhilwara Ltd. relied upon by the Commissioner and have filed the appeal there against before the Hon'ble Supreme Court which is pending for decision.

3. However, we find that the Supreme Court has dealt with the said appeal of the Commissioner against the Tribunal's order as reported on 2002 (146) E.L.T. 254 (S.C.) and has upheld the order passed by the Tribunal.

4. In this view of the matter, we find no merit in the Revenue's appeal and reject the same.