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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-08-2003

Judge : J Balasundaram, S T C.

Appellant : Parekh Prints

Respondent : Commissioner of Central Excise

Judgement :

1. The applications for waiver of pre-deposit of duty, totalling to Rs. 3,45,376/- arise out of the order of the Commissioner (Appeals) who has confirmed the above mentioned differential amount on the applicants, who are processors of grey fabrics, on the ground that the value of grey fabrics supplied by the merchant manufacturers was not the correct value but that the grey fabrics had been undervalued.

2. The contention raised before us by the learned counsel for the applicant are two fold. Firstly, Notification 27/1992, which provides exemption from licencing control to persons who intend to have goods manufactured on their behalf by supplying raw materials casts liability or responsibility of declaration of true and correct value of grey fabrics upon the grey fabrics supplier and the declaration given by the supplier in terms of the notification would clearly shows that it is the supplier who is declaring the value of the fabrics sent to the job workers. As far as the knowledge on the part of the job worker regarding undervaluation is concerned he submits that there is nothing on record to show that the applicants were aware of the wrong declaration or mis-declaration of the value of grey fabrics and therefore

he submits that duty liability if any can be confirmed only against the grey fabrics supplier and not on the independent job worker. The second ground raised before us is that the demand is barred by limitation as the period of demand is April to May, 1998 for which show cause notice has been issued on 31/03/1999 and the allegation of suppression of the correct value is not attracted against the applicants as they did not have any knowledge of the undervaluation by the grey fabrics supplier. In these circumstances he prays for waiver of pre-deposit of duty and penalty and stay recovery of the amount.

3. The prayer is opposed by the learned SDR who submits that it is clear from the reading of the notification and the declaration that the responsibility of correct declaration including correct value of the fabrics supplied is cast upon the job worker and the duty liability under Central Excise Act, 1944 is also to be borne by the job worker.

He therefore submits that there is no merit in the plea that the duty liability cannot be fastened against the applicants herein. Regarding the plea of limitation learned SDR points out that there is a clear finding in the order of the adjudicating authority that the applicants along with the grey fabrics suppliers have stated that he goods were undervalued and therefore he submits that the applicants suppressed the correct value of the fabrics from the department thus making the extended period of limitation available.

4. We have carefully considered the rival submissions. We are not satisfied that a prima facie case on merits for waiver has been made out having regard to the language of the notification and the declaration. Regarding the plea of time bar it cannot also be said that a strong prima facie case has been made out in view of the adjudicating authority's finding regarding admission of the knowledge by job workers that the goods were undervalued. We therefore direct pre-deposit of the duty amount within a period of 8 weeks from today. The failure to comply with this direction shall result in dismissal of appeal without prior notice.

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