Commissioner of Central Excise Vs. Detco Textiles Pvt. Ltd. and 13

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-27-2003

Judge : J Balasundaram

Appellant : Commissioner of Central Excise

Respondent : Detco Textiles Pvt. Ltd. and 13

Judgement :
1. The above appeals arise out of the order of the Collector of Central Excise, Bombay who has confirmed a duty demand of Rs. 28,860.30 only against M/s. Detco Textiles, holding that there was a manipulation of gate passes No. 317 and 318 both dated 3.8.1991 as well as gate pass No. 75 dated 31.5.1991. The finding regarding manipulation is based on the admission of Mr. R.B. Ranka, M.D. of M/s. Detco Textiles which is a processor of grey fabrics, supplied by its customers. The Collector has not confirmed the duty demand on the remaining 52 gate passes amounting to Rs. 7,68,637.60 and dropped this amount out of total demand of Rs. 7,97498.40 raised in the show cause notice on the ground that there was no evidence to show that these gate passes had been manipulated. The Revenue is on appeal against dropping of part of the duty demand raised against M/s. Detco Textiles as well as against dropping of the proceedings for confiscation and penalty on the processor, grey fabric supplier and the transporters.

2. I heard both sides. I find that the admission of Mr. R.B. Ranka is only in respect of three gate passes and the duty payable on these three gate passes has been accepted to be payable and the demand has been confirmed. Regarding the

remaining gate passes, I have perused the entire records including the statement recorded on various dates of Mr.

R.B. Ranka and find that he has stated very clearly that he did not prepare the remaining gate passes, which were prepared by Mr. Subhas Bore. Mr. Subhas Bore's statement was recorded, in which he has categorically denied any manipulation. There is no evidence available with the department as far as remaining 52 gate passes are concerned.

Therefore, I agree with the adjudicating authority that duty demand cannot be confirmed on these 52 gate passes.

3. As regards confiscation and the penalty, the Revenue appeals have no merits in the light of the Hon'ble Delhi High Court's Judgement in the case of Pioneer Silk Mills Pvt. ltd. v. Union of India -- 1995 (80) ELT 507 which has been upheld by the Apex Court in which the Court held that the Additional Duties of Excise (Goods of Special Importance) Act, 1957 did not provide for confiscation and penalty at the relevant time.

Therefore, I agree with the collector's finding on the aspect of dropping proceeding of confiscation as well as penalty. In the result, I uphold the impugned order and reject the appeals.