Prerna Syntex Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-11-2003

Reported in : (2004)(164)ELT69TriDel

Judge : S Kang, N T C.N.B.

Appellant : Prerna Syntex

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal is directed against the Order-in-Appeal No. 653/(SN) C.E./JPR I(391)/2002, dated 1-11-2002 passed by the Commissioner (Appeals), Central Excise, Jaipur. The order has demanded a duty of Rs. 16,32,432/- and imposed a penalty of Rs. 2 lakhs under Rule 209 of Central Excise Rules, 1944.

2. Appellant is a hundred per cent Export-Oriented Unit and the duty demand is in respect of the goods cleared to the Domestic Tariff Area (DTA) by the appellant during the period 1-3-2000 to 31-7-2000. The appellant seeks to resist the duty demand on the ground that the goods in question were exempt from additional duty of excise under Notification No. 55/91-C.E., dated 25-7-91. The appellant also submits that Board's Circular No. 384/17/98-CX., dated 20-3-98 had clarified that goods in question were not liable to the additional duty of excise. As against this, the Revenue's contention is that Notification No. 55/91-C.E., dated 25-7-91 has no application in view of the amending Notification No. 11/2000-C.E., dated 1-3-2000. It has also been pointed out that earlier Circular of the Board dated 20-3-98 had no

application in view of amendment and later Circular No.554/50/2000-CX., dated 19-10-2000. It has also been submitted that this issue is no more res integra in view of the decision of the Hon'ble Punjab and Haryana High Court in the case of Vardhman Polytex Limited v. Union of India reported in 2001 (135) E.L.T. 17.

3. The appellant has further contended that imposition of penalty was not justified as the dispute is legal in character. Yet another grievance raised is that the duty demand remains inflated since the entire price has been treated as assessable value. It is being contended that it is well settled that price in such case should be treated as cum-duty.

4. We have perused the record and have considered the submission made by both sides. The appellant's objection to the levy of additional duty of excise has no merit in the light of the decision of the Hon'ble Punjab and Hary-ana High Court in the case of Vardhman Polytex Limited.

Their other objections are well founded.

5. In view of what is stated above, durability as such is confirmed.

However, the amount of duty due has to be re-worked by the Revenue, treating the price realised as cum-duty. Upon intimation of the revised amount of duty by the jurisdictional Central Excise authorities, the appellant shall make payment of the amount, within a period of two weeks. Penalty of Rs. 2 lakhs imposed is set aside. The impugned order is confirmed subject to the modification as indicated above.