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Special Prints Ltd. Vs. Commissioner of Cen. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-14-2003

Reported in : (2003)(161)ELT888Tri(Mum.)bai

Judge : J Balasundaram, S T C.

Appellant : Special Prints Ltd.

Respondent : Commissioner of Cen. Excise

Judgement :

1. After hearing both sides for some time on the application for waiver of pre-deposit of duty of Rs. 39,12,986/- confirmed as a result of inclusion of quantity of shrinkage of grey fabrics in the assessable value of the processed fabrics cleared by the assessee during the period 1994 to 1995 and 1995-96 and penalty of amount equal to duty, we found that it was possible to hear and decide the appeal itself at this stage since the complaint of the assessee is that of contravention of principles of natural justice. Hence, after waiving the pre-deposit of the duty and penalty we proceed to take up the appeal for disposal with the consent of both sides.

2. We find that the appellants had communicated by the letter dated 6.8.98 to jurisdictional Asstt. Commissioner in response to the show cause notice dated 1.11.1996 that the issue in dispute viz. demand of differential duty on shrinkage occurring during the processing of man made fabrics was before the Hon'ble Supreme Court in Civil Appeal No.7696/97 and that the Supreme Court had

admitted the appeal of the assessee against the Tribunal's order No. 3412/97-WRB dated 20.8.97 and reported in 1997 (95) ELT 664. The Supreme Court has also passed interim order directing as follows:- "Recovery of Tax on the quantum of material which is shrunk is stayed on condition that the appellant given the security for the said amount to the satisfaction of the excise commissioner every quarter." Although, this letter was addressed to the Asstt. Commissioner, in the context of other show cause notices where the demand raised was Rs. 8,52,297, we note that in the same letter the assessee had requested not only the present show cause notice be kept in abeyance until the decision of the Apex court but other notices on similar issues be also kept in abeyance. In the impugned order it is not clear that the prayer of the assessee was granted. Therefore, there is substance in the ld.advocate's submission that the order is ex-parte having been passed without hearing the appellants. We, therefore, set aside the impugned order on this ground and remand the case to the jurisdictional Commissioner for fresh decision in accordance with law after extending a reasonable opportunity to the assessees of hearing and explaining their case.

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