

**Opal Fabrics Vs. Commissioner of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Sep-03-2003

**Reported in :** (2003)(157)ELT441Tri(Mum.)bai

**Judge :** J Balasundaram, S T C.

**Appellant :** Opal Fabrics

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. The application for waiver of pre-deposit of duty of Rs. 49,91,915/- and penalty of equal amount arises out of the Commissioner of Central Excise & Customs, Surat. In addition, there is a penalty of Rs. 5,000/- under Rule 173Q of the Central Excise Rules, 1944.

2. The brief facts necessary for appreciating the dispute are that the applicants herein are engaged in the manufacture of Polyester grey fabrics. They are 100% EOU holding licence for the private bonded warehouse under Section 58 of the Customs Act. They had cleared polyester grey fabrics under six in-voices/AR.3As to M/s. Sapana Syntex (P) Ltd., A.P. during the month of June, 2000. Since re-warehousing certificate in respect of these from the removal of the goods, enquiry was conducted and it was found that the goods were not accounted for in the statutory records. It was also found that CT3 certificates were not issued by the Central Excise Authorities at Hyderabad [under whose jurisdiction M/s. Sapana Syntex (P) Ltd. fell] and even re-warehousing certificates were not issued by the

Supdt. having jurisdiction over M/s. Sapana Syntex (P) Ltd. M/s. Sapana Syntex (P) Ltd. had been found to be closed since November, 2000. The investigation commenced culminated into show cause notice dated 3-7-2002, wherein duty demand was raised alleging that the applicants herein were not eligible to benefit of duty free supply under Notification 1/95. The notice proposed recovery of duty and also imposition of penalty against the applicants. The notice was adjudicated by the Commissioner who confirmed the demand and also imposed penalties as above, and also rejected the claim of the applicants for coverage under Notification No. 125/94 which was an alternate submission advanced by them. Hence, the appeal and application for waiver.

2. We have heard both sides. We have also perused the relevant Notifications and the evidence on record prima facie indicates that the goods did not reach M/s. Sapana Syntex and therefore, prima facie, the applicants are liable to pay duty as the benefit of Notification No.1/95 prima facie, is not available to them. Regarding the plea of availability of benefit under Notification No. 125/84, the Id. Counsel cites the decisions of the Tribunal in the cases of Parsin Chemicals & Ors. [2003 (109) ECR 293] and Deccan Granites [2003 (151) E.L.T. 582] but we find that the matter is arguable as to what is the exact meaning of the expression "allowed to be sold in India" occurring in Notification 125/84 and that we find that the Commissioner has given detailed reason for denying the benefit of Notification 125/84 in paragraph 12 of the impugned order. What is pertinent to note at this stage is that prima facie the person who clears the goods legitimately to DTA would have to pay excise duty while goods illegally cleared contrary to the Policy will enjoy the exemption, if the applicants' contention regarding the expression "allowed to be sold in India" is to be accepted.

3. The plea of time bar is also arguable in view of the finding that they have not received the re-warehousing certificate from M/s. Sapana Syntex. Having regard to the totality of the facts and circumstances of the case, we are of the view that pre-deposit of some amount is called for as the applicants have not made out a strong prima facie case for total waiver. We, therefore, direct pre-deposit of Rs. 25 lakhs (Rupees twenty-five lakhs) towards duty within a period of eight weeks from today and on such deposit, pre-deposit of balance duty and penalties shall stand

dispensed with and recovery thereof stayed pending the appeal. Failure to comply with this direction shall result in vacation of stay and dismissal of appeal without prior notice.

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