

Gopi Krishna Processors Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-15-2003

Reported in : (2003)(90)ECC824

Judge : P Bajaj, M T K.D.

Appellant : Gopi Krishna Processors

Respondent : Cce

Judgement :

1. M/s Gopi Krishna Processors Pvt. Ltd. the appellants, have two units namely Unit I and Unit II where they are engaged in the manufacture and processing of fabrics falling under Chapters 54, 55 and 60 of the Central Excise, Tariff Act, 1985. The units have installed a hot air stenter machine. The Stenter at unit I has five chambers whereas the one at Unit II has four chambers. The units also have a float drying machine which is installed at a distance of 50-60 metres from the hot air stenter.

2. The issue involved in the present appeals is the determination of the Annual Capacity of Production (ACP) of the appellants under Section 3A of the Act, read with the Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998 (for short Stenter Rules).

3. In terms of the provisions of Section 3A read with the notifications issued thereunder, the ACP of the appellants was fixed by the jurisdictional

Commissioner of Central Excise.

4. In terms of the Notification No. 42/98-CE (NT) dated 10.12.98 the appellants filed details of the Hot Air Stenter installed in their factory, which inter alia included:

5. Consequent to the filing of requisite information, the premises of the appellants were visited by the Officers of the Preventive Wing of the department. It was noticed that, the stenter had two slits one in the front of the first chamber and another at the end of the last chamber. It was also noticed that rollers were placed on the slits, which enabled the fabric to pass below the stenter chain before going into the main stenter for heat setting. The departmental authorities assumed that since the fabric moved below the stenter chain below the main stenter, the said arrangement acted as a "float drying machine", and consequently the capacity was required to be enhanced, as held in the impugned orders.

6. The appellants submit that, for any other equipment to fall within the explanation, it should aid in the process of heat setting or drying of the fabrics. The rollers enable the fabric to move below the stenter chain, upto the end of the last chamber, and come back to the feeding end, before the fabric enters the main stenter chain. The fabric merely travels below the stenter chain and has no guide rollers or chain, or any other contrivance to carry or guide the fabric. The fabric does not undergo any heat setting during the movement below the stenter chain, nor is it dried, since there are no hot air nozzles below the stenter chain. The fabric therefore also does not undergo any drying as has been assumed by the Commissioner in the impugned order. Thus, the appellants submit that creation of the two slits would not amount to installation in or attachment of a float dryer as assumed by the department. The impugned orders of the Commissioner are therefore liable to be set aside.

8. Ld. counsel has pointed out during the hearing of the appeals that, this issue has already been decided in their favour vide Tribunal's Order No. 449/03/NB/A dated 19.8.03 in the case of M/s Brahamputra Processors Pvt. Ltd. in Appeal No. E/361/03/NB/A.9. We have examined the facts of the case and the Tribunal's order in the case of Brahamputra Processors. The facts in this case are identical to those in the case of M/s Brahamputra Processors. In the said order the Tribunal

had held that the arrangement of passage of fabrics below the stenter chain as described above does not amount to attachment of float dryer mechanism in the stenter. Therefore, following the said judgment of the Tribunal we set aside the impugned orders of the authorities below to the extent these are contrary to findings arrived at by us in this order and allow the appeals. The assessee shall be entitled to all consequential reliefs.

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