

**C.C.E. Vs. Jagdamba Textile Engineers**

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

**Decided On :** Oct-28-2003

**Reported in :** (2004)(163)ELT504Tri(Mum.)bai

**Judge :** K Usha, N T C.N.B.

**Appellant :** C.C.E.

**Respondent :** Jagdamba Textile Engineers

**Judgement :**

1. The respondent is a manufacturer of textile machinery parts namely, 'Electrical Yarn Heating & Stabilising Devices' and 'Vapour Phase Yarn Heating & Stabilising Evies'. On 16.2.94, Central Excise officers visited his factory and made out a case that the respondent had violated Central Excise Rules by not entering their production from 2.2.94 to 16.2.94, in the statutory Book, RG-I . The goods involved were valued at around Rs. 41.6 lakhs. Subsequently, under adjudication order dated 17.8.95, the Deputy Commissioner of Central Excise and Customs, Surat confiscated the goods under Rule 173Q (1)(b) of Central Excise Rules and imposed a penalty of Rs. 2 lakhs on the respondent under the same Rule. An option was given to the respondent to redeem the confiscated goods on payment of fine. The respondent approached the Commissioner (Appeals). The Commissioner (Appeals) allowed their appeal and quashed the adjudication order. Commissioner went by the fact that goods in question had not been completely manufactured since sockets/connectors were to be replaced and tested again. In some cases goods were unfinished as Guide Brackets had not been assembled.

Commissioner (Appeals) also noted that the respondent's claim that the goods had not been fully manufactured was supported by expert opinion.

Commissioner relied on the decision of this Tribunal in the case of M/s Makal Plywood & Allied Inds. P. Ltd. s. C.C.E., Meerut - 1996 (32) ELT 323 (T), wherein the Tribunal held that non-accountal is merely a technical breach and goods were not liable to confiscation on that account.

2. The present appeal of the Revenue persists with the case that machinery parts in question were fully manufactured and they had rightly been confiscated by the original authority.

3. We have perused the records and have heard learned SDR. We find no illegality or impropriety in the Commissioner (Appeals)'s order. His finding is based on facts brought out by the assessee and confirmed by an expert opinion. There was no evidence that respondents had clandestinely produced goods and were attempting to remove them without payment of duty. The officers are only trying to establish that whatever they consider to be the accounting stage for manufactured goods, should have been considered as account stage by the manufacturer assessee also and goods entered at that stage in RG-I. Such a dispute is no ground for confiscating goods. The appeal has no merit. It fails and is rejected.

(The operative part of the order already pronounced in Court on 28.10.2003)

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