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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-30-2003

Judge : J Balasundaram, A M Moheb

Appellant : D.C. Polyester Ltd. and Virendra

Respondent : Commissioner of Central Excise

Judgement :

1. The application for waiver of pre-deposit of duties and penalties arose out of the order of the Commissioner of Central Excise who in the impugned order demanded a total duty of Rs. 1,75,19,139/- from the applicant (D.C. Polyester Ltd), imposed of penalty of Rs. 4,50,000/- on the applicant (Virendra Processors Pvt. Ltd.) (VPPL).

2. The facts briefly are that the applicant DCPL is engaged in the manufacture of excisable goods falling under chapters 52,54,55 of Central Excise Tarrif Act. During the relevant time the applicant was receiving inputs from M/s Virendra Processors Pvt. Ltd. who are themselves engaged in the manufacture of processed fabrics. M/s DC Polyester Ltd. process the inputs thus received on a job work basis and send them back to M/s Virendra Processors Pvt. Ltd. without payment of duty. The Department contends that return of fabrics after job work is under job work Notification No. 214/86 dated 25/3/86 which does not cover the processed fabrics falling under chapter 52,54,55 as final products in the table annexed to the said Notification and therefore duty is payable by the job worker (M/s. DCPL) at the time of removal of the processed goods from their factory. In

other words Notification No.214/86 is inapplicable to fabrics. The Commissioner, therefore demanded the said duties and imposed penalties both on the job worker and the principal manufacturer.

3. The applicants contended before the adjudicating authority that they did not receive the inputs under the provisions of Notification No.214/86 but under CENVAT Rules which are self contained in so far as movement of inputs from the principal manufacture to a job worker is concerned. They relied various decisions of the Tribunal, the Commissioner of Central Excise, Jaipur v. Noorani Textile Mills- 2000(122) ELT 744 (Tri.), Collector of Central Excise, Jaipur v. D.K.Processors 2000(122) ELT 802 (Tri.), M.Tex & Anv v. CCE Jaipur 2000(39) RLT 1091 (Tri.) to drive home the contention that when CENVAT Rules provide for movement of semi finished goods from a principal to a job worker after observing the formalities set in those Rules, the question of invoking the provisions of Notification No. 214/86 does not arise.

It is their further contented that the Department's appeal to the Supreme Court against the decision of the Tribunal in the case and M.Tex which squarely covers their case was dismissed by the Supreme Court and thus the decision has attained finality.

4. The Id. Commissioner however held that the applicant before her did come under the gamut of Notification No. 214/86 and the claim that the movement of inputs is covered by CENVAT rules is not correct in view of their own declaration that they are receiving inputs under Notification No. 214/86.

6. The issues before us in whether or nor the applicant (M/s DCPL) received various inputs from the other applicant (M/s VPPL) under Notification No. 214/86 we observe that it is an admitted position that the table annexed to Notification No. 214/88 clearly shows that the goods in question are not covered by the provisions of the Notification. Therefore the movement of inputs/semi finished goods could be only under CENVET rules which permit such movement. Secondly, the job worker is not required to pay duty on the semi finished goods when he sends them back to the principal manufacturer under Rule 57F(4).M.Tex and D.K. Processors v.CCE, Jaipur covers this finding. We therefore observe that a strong prima facie

case is made out in favour of the applicants. Financial hardship is not claimed.

8. We waive pre-deposit of duties and penalties confirmed and imposed respectively by the Id. Commissioner pending disposal of the appeal.

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