R.R. Textiles and ors. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-03-2003

Judge : S T S.S.

Appellant : R.R. Textiles and ors.

Respondent : Commissioner of Central Excise

Judgement :

1. M/s. Mahalaxmi Fabric Mills Ltd., the appellants herein, are manufacturers of fabrics and an assessee paying duty under the Central Excise Act, 1944. The other appellants are traders, besides the Director of the assessee company, Shri Jeetmal Parekh.

2. Officers made out a case of manufacture and unaccounted duty paid removal of excisable goods. The lower authorities confirmed the confiscation liabilities duty demands and imposed penalties under Section 11AC and Rule 173Q on the assessee and under Rule 209A on the other appellants.

a) The orders requiring to be set aside as the submissions made by the Ld. Advocate have force to induce a reconsideration of the findings as regards duty and penalty arrived at. The submissions are- "..... (i) There was no proper stock taking of the fabrics on the day of visit of factory by Prev. staff was not taken. This can be seen from the statement recorded of Director Shri Jeetmal Parekh and S. S. Kothari C. Ex. I/c. The relevant portions have been highlighted. Apart from this, the fabrics were in the factory and they have been cleared on payment of duty under Regular Invoices.

This undisputed facts of issuing of invoices before issue of show Cause Notice was not taken into consideration. The facts that it was all the while contended that the stock of fabrics lying kier was not taken into consideration while arriving at excess and shortage. This can be seen from the deposition of Shri J. H. Bhatt, Inspector and Shri Z. S. Pathan, Supdt. at the time of Cross examination. The other fact to be noted is the question No. 21 and 22 which is highlighted put to Shri J. H. Bhatt that when all the machines were stopped except drying range how the fabrics in wet condition were measured when the boiler itself is not operated as such measurement of wet fabrics could not be possible without drying the fabrics. The cross examination of the panch witness Shri Chunilal reveals that he was present to notice the search at intervals and he has not seen the counting of the fabrics by the officers. All these lead to the fact that there was no measurement of physical stock and as such there is no shortage of the fabrics. No duty can be demanded as the duty is paid on clearance subsequent to search. Therefore, no duty is demandable.

(ii) Similar is a position with regard to noticing of excess found due to non accounting. In fact the fabrics were accounting in lot register which is a prescribed register and entry in RG1 is subsequent which will not prove that the non accounting in RG1 was solely to remove the goods for evasion of duty without accounting.

As such no confiscation with option to pay fine adjudged. The goods were provisionally got released on cash security, which is appropriated without considering the facts on records and the same is liable to be refunded. (Annexure "C" or "D")" b) While re-considering these aspects of quantification the liability of penalty on other appellants under Rule 209A and confiscation of duty made fabrics also should be re-considered.

4. In view of the above, the appeals allowed as remand to Commissioner of Central Excise (Appeals) for denovo consideration.