Commissioner of Central Excise Vs. Ujagar Textile Inds (P) Ltd. and

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SooperKanoon Citation : sooperkanoon.com/33253

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-01-2003

Reported in : (2004)(175)ELT683Tri(Mum.)bai

Judge : A Wadhawa, S T C.

Appellant : Commissioner of Central Excise

Respondent : Ujagar Textile Inds (P) Ltd. and

Judgement :

1. All the appeals filed by the Revenue are being taken up together as they arise out of the same impugned order passed by the Commissioner of Central Excise, Mumbai, by which the proceedings initiated against the respondents have been dropped.

2. As per the facts on record, M/s. Ujagar Textile Industries Pvt. Ltd. are engaged in the processing of grey fabrics. The officers of Central Excise intercepted one vehicle carrying the processed textile fabrics from the said respondents' factory. On verification, the officers found that the duty paying documents accompanying the goods in question were not matching with the description of the goods found in the said vehicle. Accordingly, the goods as also the vehicle were seized and brought back to the factory, where further verification was done. As a result of examination of the documents and verification of the stock, the officers found that the records were not maintained properly and in some cases, there were excess quantity of the grey fabrics than what was recorded in Form IV register. Similarly, it

was noticed that the excess fully finished goods were also available in excess than the recorded balance in the stock. In respect of some of the qualities of the fabrics, shortages were found than the recorded balance. As a result, excess found goods were seized by the officers along with seizure of incriminating records.

3. During the course of the investigation, statements of various persons/employees of the appellants' company were recorded. The business premises of the merchant manufacturers, who have sent the goods to the appellants for processing, were also raided. Where ever the processed textile fabric was found in the premises of the merchant manufacturers, the same was seized, as the said persons could not produce duty paying documents.

4. On the above basis, show cause notice was issued to M/s. Ujagar Textile Inds. Pvt. Ltd. proposing demand of Rs. 8,36,512.83 on the allegation of clandestine removal of the processed fabrics. The notice also proposed confiscation of the fabrics seized from the vehicle as also the confiscation of the fabrics seized from the premises of the merchant manufacturers along with the confiscation of the seized vehicle. In addition, personal penalty was also proposed to be imposed upon the various persons including the main appellants M/s. Ujagar Textile Industries Pvt. Ltd. and the other merchant manufacturers who are the respondents in the present appeals.

5. The said show cause notice was adjudicated by the Commissioner, who vacated the same by observing that the goods seized from the tempo were duly covered by Gate Passes and there were only minor discrepancies in the number of classification lists etc. In the absence of any other evidence to show that the goods were cleared without payment of duty, the confiscation of the fabrics and the vehicle was not justified. She also observed that the shortages etc. were on account of shrinkage and discrepancy in description or marking would not amount to clandestine removal, and hence, the demands were dropped.

6. The Revenue is aggrieved with the above order of the Commissioner; hence the present appeals.

7. We have heard Shri Uma Shankar, ld, SDR appearing for the Revenue and Shri R. Swaminathan, ld. Consultant for the Respondents.

8. Shri Uma Shankar ld. SDR has drawn our attention to the various statements made by the employees of M/s. Ujagar Textile Industries Pvt.

Ltd. and the modus operandi adopted by the said assessee for evading the duty. He submits that the Director of the said company has also admitted the evasion. The above facts were corroborated by the statements of the merchant manufacturers. Though the Commissioner has reproduced the above statements in the order passed by her, she has not referred to the same in her order portion and has not discussed the evidentiary value of the said statements. The order has been passed by her on general observation that there was no evidence on record reflecting the clandestine activity of the said assessee and suspicion cannot take the place of proof. It is the submission of the ld, SDR that a reading of the various statements, which corroborated each other, along with the facts of shortages and excess detected by the visiting officers would reflect upon the clandestine activity being undertaken by the said assessee.

9. Countering the arguments, Shri Swaminathan, ld. Consultant appearing for the respondents, draws our attention, to page 40 of the Paper Book which is an Annexure to the show cause notice and submits that what ever excess goods were found by the visiting officers at the time of verification, the same have been subsequently entered into their records and cleared on payment of duty. Similarly, grey fabrics which were found as having not been entered in Form IV register were subsequently entered and dealt with in accordance with law. As such there is no question of any demand of duty on such goods. As regards confiscation of fabrics, he submits that the disputed duty is the additional excise duty under Additional Duties of Excise(Goods of Special Importance) Act 1957 and as per the decision of the Hon'ble Delhi High Court in the case of M/s. Pioneer Silk Mills reported in 1995(80)ELT 507(Del.), neither the fabrics can be confiscated nor the penalties can be imposed. The said decision of the Delhi High Court was subsequently confirmed by the Hon'ble Supreme Court when the appeals filed by Union of India were dismissed. As such he submits that the Revenue's appeals against the

respondents other than M/s. Ujagar Textile Industries Pvt. Ltd. which only deals with confiscation and penalty, are liable to be rejected on this ground alone.

10. As regards the appeal against M/s. Ujagar Textile Industries Pvt.

Ltd., the ld. Consultant submits that though the Commissioner has not given any detailed finding on the various points, she was well convinced about the allegations levelled by the Revenue as not have been substantiated by any evidence and that is why the show cause notice has been vacated by her. He further submits that in their reply to the show cause notice, the said respondents had dealt with each and every allegation made in the show cause notice and has rebutted the same. If the said reply is taken into account, the Revenue's case does not survive at all.

11. We have considered the submissions made by both sides. We find force in the contention of the ld. SDR that the Commissioner while disposing of the case, has not dealt with the evidences available on record in the shape of statements of the various persons and the reply filed by the respondents M/s. Ujagar Textile Industries Pvt. Ltd. In the case of clandestine removal, each and every piece of evidence is required to be examined and its evidentiary value adjudged. General observation about the presence of the evidences, without discussing the weightage of such evidences, is not proper and just. From the finding portion of the impugned order passed by the Commissioner, we do not find any reference to the statements or the other evidences relied upon in the show cause notice or to the submissions made by the respondents.

As such, we feel that the impugned order should be set aside and the matter should be remanded to the Commissioner for deciding the disputed issue of demand of duty against M/s. Ujagar Textile Industries Pvt.

Ltd. afresh. However, we make it clear that where the said respondents had already entered the excess goods found in the statutory records and cleared subsequently on payment of duty, the demand for the same is not required to be confirmed again. Similarly, in respect of the grey fabrics found in excess than the recorded balance, cannot call for any demand of duty on the same for the simple reason that no processing has been done on the same as yet. We also take note of the respondents' contention about the non imposition of penalty and non confiscation of the fabrics in view of the Hon'ble Supreme Court decision in the case of M/s,. Pioneer Silk Mils and hold that the fabrics in question cannot be confiscated and penalty cannot be imposed upon the said respondents.

In the case of respondents M/s. Ujagar Textile Industries Pvt. Ltd., the matter is being remanded to the Commissioner only for the purpose of demand of duty.

12. As regards the other appeals against the respondents, we find that the proposal in the show cause notice was only for imposition of penalty upon them and for confiscation of the fabrics seized from their premises. As already observed, the duty involved in the present case is additional excise duty under Additional Duties of Excise (Goods of Special Importance) Act, 1957, in which case, as held by the Hon'ble Delhi High Court and confirmed by the Hon'ble Supreme Court in the case of M/s. Pioneer Silk Mills, neither confiscation can take place nor penalty can impose. As such, no merits are found in the Revenue's appeals against the other respondents, the same are accordingly rejected.

13. In the result, the appeals against M/s. Ujagar Textile Industries Pvt. Ltd. is allowed by way of remand for the purpose of duty and the appeals filed against the other respondents are rejected.