

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

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-10-2003

Judge : A Wadhwa, 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 for disposal as they arise out of the same impugned order passed by the Commissioner of Central Excise vide which she has dropped the proceedings initiated against the respondents by way of issuance of a show cause notice dated 23.11.1990.

2. Shri Uma Shankar, learned J.D.R. appearing for the Revenue submits that the first respondents M/s. Ujagar Textile Inds. P. Ltd. are engaged in the manufacture of / processing of man made fabrics falling under Chapter 54 & 55 of the Central Excise Tariff Act, 1985. On 25.5.1990 one tempo belonging to the said appellants was intercepted and was found to be loaded with the processed man made fabrics. The documents accompanying the said consignment were doubted by the officers and as such to verify the correctness of the same, the tempo was brought to the factory. On verification it was found that the tempo was loaded with excess quantity of fabrics than shown in the excise documents. The other discrepancies as regards the packing slip and the lot number was also noticed. The fabrics were accordingly seized along with the seizer of the tempo.

3. The officers also verified the stock position and the records maintained by the said appellants. It was found that some lots shown in the register were dispatched, whereas the goods carrying the same lot numbers were found in the factory premises. Similarly various discrepancies were found in the delivery challan cum packing slips.

Seizers were effected by the officers and as a post seizer action the premises of the appellant's customers, i.e. merchant manufactures, were also put to search and the processed fabrics found therein where also put under seizer.

4. As a result of post seizer investing action statement of the various persons like employees of the appellants company as also the director of the company and the authorized representative of the merchant manufactures were recorded. Shri Uma Shankar, learned J.D.R. has drawn our attention to the various statements of various persons wherein they have explained the modus operandi adopted by them for clandestine manufacture and removal of the goods. The statement of the director admitted the discrepancies detected by the officers and the statement of the merchant manufacturer, corroborate deposition made by the employee of the M/s. Ujgar Textile Inds. P. Ltd. The grievance of the Revenue that though the said statements form part of the impugned order, the evidentially value of the same has not been discussed by the adjudicating authority, who has passed order on the general observation that the case of the department is based on the interpretation of the figures not substantiated with any other factor and the department has also relied on non statutory record which are not authenticated and are internal documents maintained by the assessee to watch and ensure that the processing and re-processing is done to the satisfaction of their customers. The learned J.D.R. strongly contended that the Commissioner has not made any reference to the various statements of the various persons wherein they have given details of the modus operandi adopted by them for covering the illegal activities. As such, he submits that the matter needs to be remanded to the Commissioner for fresh adjudication with direction to examine evidentially value of the said statements

5. Shri R. Swaminathan, learned consultant appearing for the respondents submits that in their reply to the show cause notice they had met with all the allegations

made by the Revenue. It is only on consideration of their reply that the adjudicating authority has felt that the Revenue has not been able to substantiate the charge of clandestine removal and as such, the Commissioner has rightly dropped the demand against M/s. Ujagar Textile Inds. P. Ltd.

6. As regards the other respondents Shri Swaminathan, learned consultant submits that the proposal in the show cause notice was only for confiscation of the fabrics seized from the premise of the merchant manufacturers and for imposition of penalty upon them. He submits that the differential duty is additional excise duty under the provision of Additional Duty of Excise (Goods of Special Importance) Act, 1957, in which case the fabrics can not be confiscated and no penalty can be imposed as held by Hon'ble Delhi High Court in the case of Pioneer Silk Mills reported in 1995

(80) ELT 507 (Del.) and confirmed by the Hon'ble Supreme Court.

7. We have considered the submissions made by both the sides. From the impugned order, we find that the Commissioner while adjudicating the case has not taken into account the statement of the various persons and has not dealt with the evidential; value of the said statements as required to be gone through by the adjudicating authority. No doubt the onus to prove the charge of clandestine removal lies heavily on the Revenue and is required to be discharged by the Revenue by production substantial of tangible evidence. Each case of clandestine removal depends upon the facts of the particular case and the evidence present in that case. Such, evidences may be in the shape of statements of various persons or otherwise. In the instant case we have seen detailed statements of the employees of M/s. Ujagar Textile Inds P. Ltd. as also that of the director and the merchant manufacturer. As per the respondents such statements stand fully explained by them in reply to the show cause notice. Whatever may be the evidentiary value of the said statements, the adjudicating authority in our view should have considered the said statements and should have examined the same vis-a-vis the reply made by the respondents we do not find any reference to either. As such, we are constrained to set aside the impugned order and remand the matter to the Commissioner for fresh adjudication for the purpose of demand of

duties, as proposed in the notice.

8. As regards, the confiscation of the seized fabrics either belonging to Ujagar Textile Inds. P. Ltd. or other respondents and as regards imposition of personal penalty upon the respondents, we agree with Shri Swaminathan that issue is no more res integra and has been set at rest by the Delhi High Court's order in the case of Pioneer Silk Mills, as confirmed by the Hon'ble Supreme Court. Inasmuch as the appeals against the other respondents involve issue of confiscation and imposition of penalty, we do not find any merit in the same. We also make it clear that the appeal in the case of Ujagar Textile Inds. P. Ltd. is being remanded only for the purpose of duty and not for confiscation and penalty.

9. As a result, the appeal against the M/s. Ujgar Textile Inds. P. Ltd. is allowed by way of remand for redecison on the issue of confirmation of duty and the appeals filed against other respondents are rejected.

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