

Monitex Dye Prints Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-04-2004

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

Appellant : Monitex Dye Prints

Respondent : Cce

Judgement :

1. The appellants are manufacturers of processed man made fabrics coming under chapter 54 & 55 of the Central Excise Tariff. Challenge is against the order passed by the Commissioner (Appeals) dt. 13.5.02.
2. Two issues are raised in this appeal. One relates to fixation of annual capacity including the galleries alongwith 4.4 chambers. We find that this issue is covered in favour of the appellant by the decision of this tribunal in Sangam Processors reported in 2002-TAXINDIAONLINE-59-CESTAT-DEL-SB affirmed by the Hon'ble Supreme court as reported in 2002 (146) ELT 254. We, therefore, hold that to the extent the annual capacity is fixed including the galleries cannot be sustained.
3. The other dispute relates to calculation of the average value of Rs. 30 per sg. m. based on the value of clearances during the preceding financial years. The appellant has taken into consideration only the value of the clearances for domestic consumption. The authorities below took the view that the value of clearances for export has also to be taken into consideration. On going through the relevant notification No. 36/98 dt. 10.12.98 and Hot Air Stenter Independent.

Textile processors Annual Capacity Determination Rules, 1998, we find no provision for excluding the clearances for export for the purpose of calculation of the average value of Rs. 30 per sg. mt. Under these circumstances, the contention raised by the appellant on this issue is rejected.

4. In the light of the above, the order impugned is modified to the extent that the galleries cannot be included in fixing the annual capacity. In the order impugned penalty of Rs. 6.60 lakhs imposed on the appellant has been confirmed. Since the demand is within the normal period, we do not find any reason to sustain the imposition of penalty.

The penalty is, therefore, set aside. The appeal stands partly allowed in the above terms.

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