Prime Exports Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-19-2004

Reported in : (2004)(167)ELT313TriDel

Judge : A T V.K., P Chacko

Appellant : Prime Exports

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal, filed by M/s. Prime Exports, the issue involved is whether penalty is imposable on them for opting to avail the Compounded Levy Scheme under Rule 96ZNA of the Central Excise Rules, 1944.

2. Shri K.K. Anand, learned Advocate, submitted that the appellants are engaged in processing of textile fabrics and they had opted for Compounded Levy Scheme under Rule 96ZNA; that the Commissioner, under the impugned order, has rejected their application on the ground that they do not satisfy the conditions of the Notification to be eligible for the Special Procedure of Compounded Levy Scheme available to an independent processor engaged in the manufacture of specified textile fabrics; that the appellants are not challenging the denial of Special Procedure of Compounded Levy Scheme; that the appellants are contesting the penalty of Rs. 50,000/- imposed on them for filing wrong declaration; that no penalty is imposable as they had opted for the Special Procedure of Compounded Levy and had paid the duty more than payable by

them; that, in fact, while submitting their reply to the show cause notice issued to them, they had claimed the refund of Rs. 10,48,516/- paid by them in excess; that the Commissioner, in the impugned order, has not given any finding on the refund of the duty claimed by them.

3. Shri P.M. Rao, learned D.R., reiterated the findings as contained in the impugned order and submitted that the Commissioner, in the present proceedings, was dealing with the question as to whether the Compounded Levy was available to the appellants; that if any duty has been paid by them in excess, they have to claim the same under Section 11B of the Central Excise Act.

4. We have considered the submissions of both the sides. As the appellants are not challenging the denial of Special Procedure of Compounded Levy to them, the Commissioner's order to that extent is upheld. We agree with the learned Advocate that no penalty is imposable in such a situation where an assessee opts for a Special Procedure and files the declaration to that effect with the Department. We also observe that the Department is not disputing the fact that more duty has been paid by them by opting this Compounded Levy Scheme. In view of this, we set aside the penalty imposed on them. We also agree with the learned D.R. that if any duty has been paid in excess by them, they have to follow the procedure prescribed under the Act and Rules for claiming the refund of the same. The appeal is disposed of in these terms.