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Deepak PolyspIn Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-19-2004

Judge : A T V.K., P Chacko

Appellant : Deepak Polyspin

Respondent : Cce

Judgement :

1. The Revenue has filed the present appeal against setting aside the penalty imposed on M/s. Deepak Polyspin by the Commissioner (Appeals) under the impugned order.

2. Shri Ajay Jain, learned Advocate for the Respondents, under letter dated 10.2.2004 has requested for adjournment on account of his engagement somewhere else. As the issue involved is in very narrow compass, we reject the application for adjournment and take up the appeal for disposal after heading Shri D.N. Chaudhary, learned SDR, and after perusing the records.

3. Shri D.N. Chaudhary, learned SDR, submitted that the Respondent, a 100% Export Oriented Unit, were engaged in the manufacture of man-made blended yarn for which they had procured capital goods/machinery without payment of CEntral Excise duty in terms of Notification No.1/95-CE dated 4.1.95; that when the Central Excise Officers visited their factory premises on 5.8.98 some of the machines/capital goods were not found physically present therein; that on subsequent inquiry it was found that the Respondents had paid an amount of Rs.

1,34,18,213/- towards duty involved on capital goods, machinery, etc.

as per final debonding order dated 10.9.99 of Development Commissioner NEPZ, Noida; that this duty amount was paid by them on 14.10.98 and included also the duty involved on the capital goods/machinery found short by the Central Excise Officers; that the Additional Commissioner, under the Adjudication Order No. 38/2001 dated 31.10.2001 confirmed the amount of duty Rs. 4,84,046/- and imposed a penalty of Rs. 9 lakhs under Rule 173Q of the Central Excise Rules, 1944; that on appeal filed by the Respondents the Commissioner (Appeals), under the impugned Order, has set aside the penalty on the ground that the Appellants had already paid the entire amount of duty as per the debonding order and no penalty is imposable on them. The learned SDR mentioned that the penalty is imposable as they have contravened the provisions of Notification No. 1/95-CE inasmuch as the capital goods/machinery were not found available at the time of physical verification, and therefore, the penalty imposed under Rule 173Q is justified. We observed that the Respondents were 100% Export Oriented Unit governed by the provisions of Rules contained in Chapter V-A of the Central Excise Rules, 1944. As per provisions of Rules 173A(2) of the Central Excise Rules falling in Chapter VII-A the provisions of the said Chapter do not apply to a manufacturer to whom the provisions of Chapter V-A apply. Rule 173Q under which the Revenue has sought to impose penalty on them falls under Chapter VIIA and as such the provisions of Rule 173Q are not applicable to the Respondents whom provisions of Chapter VA used to apply. In view of this we reject the appeal filed by the Revenue.

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