

Colour Makers Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-18-2004

Reported in : (2004)(96)ECC542

Judge : A T V.K., M Bohra

Appellant : Colour Makers

Respondent : Cce

Judgement :

1. In this appeal, M/s. Colour Makers are challenging the demand of duty and penalty on the ground that they were engaged in dyeing the bleaching of grey cotton fabrics, both with the aid of power and without the aid of power.

2. Shri R.P. Singh, learned Consultant, submitted that after intercepting a cycle rickshaw loaded with processed cotton fabrics, the central excise officers visited the factory premises of the appellants and found that two semi-automatic jiggers and two hand operated jiggers were installed in the factory for processing fabrics; that after investigation, the Additional Commissioner confirmed the demand of central excise duty for the period from 12.8.98 to 22.6.99; that on appeal, the Commissioner (Appeals) had held that they had started processing of fabrics with the aid of power only w.e.f. 6.6.99 and the demand would be payable only from that date onwards; that both the Revenue and the appellants came in appeal before the Appellate Tribunal; that in the appeal, they had contended that out of 4 jiggers only 2 jiggers were being operated with the aid of power and other two

jiggers were hand operated and no duty was payable on the fabrics processed on hand operated jiggers; that the Tribunal observed that this was a verifiable fact and remanded the matter to the Commissioner to examine this aspect and recalculate the duty payable; that in the remand proceedings, the Commissioner (Appeals) has extended no benefit to them holding that they have failed; to prove that clearances were of two types of fabrics i.e. processed with the aid of power and without the aid of power. The learned Consultant further submitted that register was produced before the original Adjudicating Authority and also before the Commissioner (Appeals) and the Tribunal which remanded the matter for de-novo decision; that none of these three authorities have questioned the genuineness of the register; that it was, therefore, not open to the Commissioner (Appeals) in the remand proceedings to doubt the genuineness of the said register; that the Tribunal had only remanded the matter to the Commissioner (Appeals) to examine the aspect of production of fabrics on hand operated jiggers and to recalculate the demand; that in the remand proceedings, register was produced before the Commissioner (Appeals) who has not recorded this fact in the impugned order; that the fact that two jiggers were hand operated finds mention in the show cause notice dated 7.9.2000 itself under appeal. Finally, the learned Consultant mentioned that before 6.6.99, all the fabrics were being processed without the aid of power and as such, at that time, there was no question of showing the figure of fabrics with or without the aid of power; that only from 6.6.99, they have started to show the said fact in the separate portion of the register; that therefore, the duty is not payable by them on the entire quantity of fabrics.

3. Countering the arguments, Shri H.C. Verma, learned DR submitted that the demand of duty against the appellants was raised on the basis of sale invoices resumed by the central excise officers from the factory premises of the appellants; that at that time, there was no register found maintained in the factory; that there is no fact on record to show that they were maintaining such record revealing production with or without the aid of power; that the chart was first time produced by them before the Adjudicating Authority; that in view of these evidences, the appellants have not succeeded in proving the fact that the fabrics in respect of which the duty has been confirmed was not processed with the aid of power.

4. We have considered the submissions of both the sides. The Appellate Tribunal vide Final Order No. 220/2002-D dated 11.9.2002 had remanded the matter to the Commissioner (Appeals) with the direction to examine whether production on hand operated jiggers was included while calculating the duty confirmed or it was not included. The Commissioner (Appeals) in the remand proceedings has discussed in detail and has come to the conclusion that the appellants had failed to submit at the time of investigation any record relating to production with hand operated jiggers or with other jiggers separately. The Commissioner (Appeals) has not gone beyond the remand direction and the appellants have not succeeded in proving as to whether the fabrics said to have been processed without the aid of power was also included in the demand of duty. Therefore, we find no reason to interfere with the demand of duty confirmed by the Commissioner (Appeals). We, therefore, uphold the demand of duty. However, considering the facts and circumstances of the case, we reduce the penalty imposed on the appellants to Rs. 20,000.

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