Commissioner of Central Excise Vs. Mukesh Synthetics and Mukesh H.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-12-2004

Judge : A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Mukesh Synthetics and Mukesh H.

Judgement :

1. These appeals by the Revenue are directed against the order of Commissioner (Appeals). In the impugned order, the Commissioner sets aside the order of the lower authority who confiscated 7315.775 kgs. of dyed polyester texturised yarn, 960.660 kgs. of grey white texturised yam and imposed a penalty of Rs. 10,000/- on the respondent company and Rs. 50,000/- on its director.

2. The Commissioner (Appeals) held that 7315.775 kgs. of DPTY confiscated on the ground that it was not accounted for in RG1 even when it was ready to pack condition is not justified as the goods in question have not reached the RG1 stage even according to the panchnama drawn at the time of seizure. In regard to 960.660 kgs. of grey/white texturised yarn confiscated on the ground that it was not accounted in the raw material register, the Commissioner (Appeals) held that as per the evidence on record these goods were received in the factory only the previous day, the assessee did not have time to enter the goods in the raw material register and that the confiscation of raw material on the specious ground that it was not immediately not entered in the raw material register cannot be upheld, He set aside the order of the Assistant Commissioner. Penalties are

automatically set aside.

4. The Commissioner (Appeals) had set aside the order of the lower authority correctly. The Commissioner (Appeals) relying on the panchnama has concluded that the dyed polyester texturised yarn has not reached the RG1 stage. I see no reason to interfere with the finding.

The officer who visited the factory could have asked the assessee to enter the goods in RG1 if they were to believe that the goods need such entry. 1 don't see any force in the Revenue's contention that the goods are in ready to despatch condition and so should have been entered in RG1. The Commissioner (Appeals) has also given valid reason as to why the grey yarn is not liable to confiscation.

5. The Commissioner (Appeals) is correct and legal. Does not call for any interference.