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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-20-2004

Judge : M T K.D.

Appellant : Ruby Mills Ltd.

Respondent : The Commissioner of Central

Judgement :

1. The present appeal is directed against the order of the Commissioner (Appeals), who confirmed the order of the Assistant Commissioner rejecting the refund claim of Rs. 1,11,229/-. The claim was held not admissible under the provisions of Section 11B of the Central Excise Act. The refund was claimed on the ground that no excise duty was payable on the yarn by including the weight of the sizing material. The submission was that though the yarn was cleared on payment of duty after sizing, only the pre-sized weight was required to be considered.

2. The lower authorities did not dispute the claim on merits. The claim was rejected on the ground that the appellants did not produce any evidence to satisfy that the duty incidence on the said yarn was not passed on to the customers directly or indirectly. The appellants claimed that since the duty was paid under protest the provisions of Section 11B do not apply, meaning thereby that, unjust enrichment clause also will not apply. The Commissioner (Appeals) in the impugned order, while confirming the findings of the original authority has also observed that it will be normal presumption that the duty paid on sized yarn would

have been taken into account for pricing of exported fabrics.

4. During the hearing, the appellants produced the copies of AR-4, the export invoice and bank realisation certificate, which prima facie indicate that, the duty paid on sizing portion, was not passed on to the overseas buyers. However, since this evidence was not before the adjudicating authority, in the interest of justice, it needs to be first examined by the said authority on merits.

5. Accordingly, the orders of the lower authorities are set aside, and the appeal of the appellants is allowed by way of de novo remand to the adjudicating authority who shall give suitable opportunity to the appellants to produce the necessary evidence to the effect that the duty burden has not been passed on to another person.