

Commissioner of Central Excise Vs. Pankil Textiles

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-17-2004

Judge : S T S.S., K Kumar

Appellant : Commissioner of Central Excise

Respondent : Pankil Textiles

Judgement :

1. After hearing both sides, and considering the materials, it is found that valid grounds exist in the Revenue's appeal to deny the benefit of Notification No. 1/93 to the respondents herein, since the respondents have purchased the premises where the factory is located from the earlier owners in 1995-96 and thereafter 1996-97 had cleared the goods from these premises and another factory located at Kim in Surat District and the turnover from these two factories in 1995-96 is admittedly more than Rs. 300.00 lakhs.

2. The reliance of the Id D.R. on the cases of 1990 (50) ELT 250 Indica Laboratories Pvt. Ltd. v. Union Of India. (PARA 30) AND Dukes Pharma v. Govt of India 1994 (69) ELT 433 (Mad) and Gaurav Equipments (Pvt) Ltd v. CCE 1993 (66) ELT 438 (Tri) is well founded and induces us to set aside the impugned order of the Commissioner (Appeals).

3. On considering the reply of the Ld Advocate for the respondents and the Cross Objection and after ascertaining from the orders impugned in this case that the submission, of the respondents, as regards the nature of clearances from 1.4.1996

to 23.11.1996 was not considered by the Commissioner (Appeals), the factual position whether those clearances made by the earlier owner, were on payment of duty or after availing the exemption limits, is required to be redetermined along with the applicability of the decisions of the Larger Bench on the issue of "first clearances in the case of an SSI notification" availment benefit. Since these facts and applicability of the law as settled by the Larger Bench has to be ascertained and determined, the order of the Commissioner (Appeals) being set aside is required to be remitted to him with directions to rehear both sides and thereafter redetermine the issues as per the case laws relied upon by the Departmental Representative on the denial of the benefit of Notification 1/93 and the Larger Bench decision that what should be considered as first clearances in the case of an SSI exemption.

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