

Commissioner of Central Excise Vs. C.T.M. Textile Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-11-2004

Judge : A Wadhwa, S T S.S.

Appellant : Commissioner of Central Excise

Respondent : C.T.M. Textile Mills

Judgement :

1. The present appeal filed by (be Revenue is against the order of the Commissioner of Central Excise, Ahmedabad vide which he has allowed the Respondents' claim for refund on the ground that the length of the galleries was not to be included for the purposes of levy of duty by arriving at the annual capacity of production, as held by the Hon'ble Supreme Court in the case of Sangam Processors (Bhilwara) v. Commissioner 2002 (146) ELT 254 (SC).
2. The Revenue's grievance against the above order, duly represented through the Ld D.R., is that the Respondents had not filed any appeal against the order of fixing annual production capacity. Inasmuch as the order fixing the Annual Production Capacity was not challenged and the duty was being paid in accordance with the same, the Respondents could not have claimed refund of duty on the ground that in some other case the galleries have been held as non-includible. Nobody has appeared on behalf of the Respondents.
3. After considering the submissions made by the Ld D.R., we find that the Hon'ble Supreme Court in the case of CCE v. Flock India Pvt Ltd. 2000 (40) RLT 131 (SC)

has held that once an order of assessment is passed, duty would be payable as per that order. Unless the order of assessment has been reviewed or modified in an appeal, that order stands. Similarly, in the recent decision in the case of Priya Blue Industries Ltd v. CC (Preventive) 2004 (64) RLT 321 (SC), the Hon'ble Supreme Court has held that no refund can be maintained without the order of assessment having been modified. BPR Tex Prints Pvt Ltd v. CCE 2004 (163) ELT 336 (Delhi), wherein it was held that the order of the Commissioner fixing the Annual Capacity of Production having attained finality, an assessee was liable to discharge duty liability in accordance with the production capacity so fixed, and subsequent decision in another case will not apply.

5. Inasmuch as the issue is decided against the Respondents, we set aside the impugned order of Commissioner (Appeals) and allow the appeal filed by the Revenue.

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