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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-08-2005

Judge : T Anjaneyulu

Appellant : Tapi Textiles Pvt. Ltd. and Shri

Respondent : Commissioner of Central Excise

Judgement :
1. Both these appeals have been filed against the Order of the Commissioner (Appeals), who has dismissed the same for non-compliance of Order dated 27.07.2004 under provisions of Section 35F of the Central Excise Act, 1944.

2. The Jt. Commissioner, Central Excise & Customs, Nagpur, has confirmed the demand of Rs. 1,27,420/- on 3143.296 on Polyester yam found short and appropriated a sum of Rs. 75,526/- already paid vide TR6 challan dated 22.10.2002 against the demand confirmed and imposed equal amount of penalty. He has also imposed penalty of Rs. 10,000- on Shri Kamal Lalchand Chug, Proprietor of M/s. Jannat Fabric.

3. In the instant case, on physical verification of the polyester texturised yarn, it was found short in the Mill of the appellants; as such confirmation of the demand of duty and penalty apart from confiscation of the seized goods were ordered. Hence, both these appeals along with stay applications.

4. The Id. counsel appearing for the appellants relied upon the following case laws:-Harshvardhan Exports v. CCE, Surat-I - 2003 (157) ELT 680 (Tri.

- Mumbai).CCE, Delhi-I v. Oceanic Cooling Towers (P) Ltd. - 2003 (161) ELT 631 (Tr.-Del.)Essex Marketing (P) Ltd. v. Commissioner of Central Excise, Meeruti 5. It has been observed that shortages in raw material in 100% EOU, which are manufactured in India and not being imported non-duty paid product, cannot be warehoused goods under Section 71 of the Customs Act, 1962. Hence, goods found short liable to duty under Section 3 of the Central Excise Act, 1944, and not under Section 72 of the Customs Act, 1972. Demand of duty and penalty raised under provisions of the Customs Act, 1962, not sustainable.

In the second case, it is held that raw materials are not liable to confiscation.

6. The appellants further attacked on the Show Cause Notice issued by the Department stating that it is an illegal one as it pre-judged the issue and as such it is against the principles of natural justice - Madurai Metal Industries v. Union of India - 1991 (52) ELT (495) (Mad.).

7. It is contended that the SCN has invoked the extended period of limitation by taking recourse to the proviso under Section 11A(1) for recovery of duty. The allegation of keeping excess unaccounted quantity with intention to remove the same clandestinely or after processing in the form of gray fabrics is only a bland assertion without any corroborative evidence. The determination of shortage of production based on input-out norms is illegal. The input-out ratio has to be considered without various other factors like quality of raw material, wastage due to machinery or power upsets, human errors, etc. Therefore, simply on the basis of so called disclosure of input-out norm by the proprietor of the unit, shortage of raw materials or clandestine removals cannot be determined.

8. Having considered the above submissions made by the appellants, I am of the view that there appears strong prima facie case and an amount of Rs. 75,526/- has already been appropriated towards duty confirmed is substantial compliance of pre-deposit order. Therefore, further pre-deposit is waived and its recovery is stayed. Both appeals are allowed in remand. The Commissioner (Appeals) shall

dispose off the appeals on merits without further insisting upon pre-deposit. Order accordingly.