

**Commissioner of Central Excise Vs. Rinkoo Processors Ltd. and**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Feb-24-2005

**Judge :** K Kumar

**Appellant :** Commissioner of Central Excise

**Respondent :** Rinkoo Processors Ltd. and

**Judgement :**

2. The Id. JDR appearing for the Revenue contended that the statements have not been retracted, panchnama dated 8.3.97 shows shortages, fabrics has not reached the RG I stages and he reiterated the order-in-original and submitted that the same is correct.

3. The undisputed facts in this case appear to be that the fabric was lying in various stages of processing which has not been challenged by the department; no documentary evidence has been brought on record by the Department to prove the clandestine removal; that the fabric had not reached the RG.I stage. The Commissioner (Appeals) in para 3 and 4 has noted as under:- "3. The appellants in their memorandums of appeal as well as during the course of personal hearing have raised various contentions, inter alia, stating that neither in the show cause notice nor in the impuged order any evidence has been brought on record to hold that the said shortage occurred on account of clandestine removal by them; that clandestine removal has to be proved by direct physical evidence or sufficient circumstantial evidence; that in this regard, they rely on decision of CEG AT in the case of Associated Cyliner Industries reported in 1990 (48) ELT 460 (T) and in the

case of Leather Chemical & industries Ltd. reported in 1984 (15) ELT 451; that it is an admitted position in para 2 at page 3 that the alleged shortage has been found on physical verification of the stock lying at various stages of processes, viz., bleaching, dyeing, printing, etc and it can be inferred that dimensions of fabrics varies at each process carried out during the processing, therefore, variation at the intermediate stage is not a conclusive evidence of removal of goods; that therefore no penalty or interest Under Section 11 AC or 11AB is payable.

4. I have carefully considered the facts on record and the submissions made by the appellants. I find substantial force in the contentions of the appellants as raised in para 3 above wherein, they have said that the stock was taken when the fabrics were under various stages of processing, thus, the entire case has been booked on presumptions and assumptions and no other documentary evidence or circumstantial evidence has been brought on record to prove that the fabrics found short were cleared illicitly by the appellants. Merely placing reliance on a statement given by excise clerk and Director of the company cannot be made basis for establishing the allegation that there was clandestine manufacture and clearance. The issue also gets support from the judicial pronouncements cited by the appellants." 4. No contrary evidence has been brought to my notice. The Id. Counsel for the appellant relied on the following decisions:-Dulichand Silk Mills (P) Ltd. v. CCE, Hyderabad reported in 2001 (133) E.L.T.468 (Tri. Chennai).

(c) Apex Traders v. CCE, Meerut reported 1996 (84) E.L.T 459 (Tribunal).

5. The above decisions inter alia state that mere statements are not enough. Some corroborative evidence is necessary.

6. In view of the above factual and legal position, I do not find any reasons to interfere with the order passed by the Commissioner (Appeals). The appeals are, therefore, dismissed.

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