

Khandelwal Textiles Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-04-2005

Reported in : (2005)(102)ECC89

Judge : S Kang, Vice, A T V.K.

Appellant : Khandelwal Textiles Pvt. Ltd.

Respondent : Cce

Judgement :

2. The appellant filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals). In this case the appellants are engaged in the manufacture of process of cotton fabric and they were availing the benefit of Notification No. 5/99-CE. On 19.4.99 and 20.7.99 the officers of revenue visited the factory of the appellants and it was found that they were undertaking the processing with the aid of power whereas the Notification provides exemption only on the ground that the power is not used in the processing of the fabric.

3. In the impugned order, the seized cotton fabric was ordered to be confiscated and allowed to be redeemed on the redemption fine of Rs. 60,000 and penalty of Rs. one lakh is imposed on the appellant.

4. The contention of the appellant is that the revenue also issued a separate show-cause notice regarding demand of duty after denying the benefit of Notification No. 5/98 and 5/99 for the past clearances and demand was confirmed. The contention

is that on appeal filed by the appellant, the Tribunal vide Final Order No. 42-44/05/NB-C dated 10.1.05 set aside the demand after taking into consideration the decision of Hon'ble Madras High Court in the case of Beauty Dyers v. Union of India and Ors., 2002 (52) RLT 636 whereby the Hot Air Stenter Independent Textiles Processors Annual Capacity Determination Rules had been declared ultra vires. The contention of the appellant is that as the demand is set aside, therefore, confiscation on the ground that the goods found in factory are liable to pay duty under Section 3A of Central Excise Act is not sustainable in view of the decision of the Tribunal.

5. The contention of the Revenue is that the appellants were wrongly availing the benefit of exemption Notification No. 5/98 and 5/99, therefore, the goods found in factory were confiscated and the appellants were directed to be registered with the excise authorities under the relevant provisions of law. The contention is that as confiscation is on the ground that the appellants were wrongly availing the benefit of exemption notification, therefore, goods are liable for confiscation.

6. In the case the appellants are not disputing that they were not eligible for the benefit of exemption notification. The only contention of the appellant is that as the demand in respect of past period under Section 3A of the Central Excise Act is set aside, therefore, confiscation is also not sustainable. We find that as the appellants were wrongly availing the benefit of exemption notification, therefore, the goods found in factory are liable for confiscation. The earlier decision of the Tribunal in the appellant's own case in respect of the demand for past period is no help to the appellant as in that case the demand was set aside on ground that relevant rules were held to be ultra vires. As the appellants were held to be not eligible for the benefit of notification, in view of the earlier decision of the Tribunal we find no infirmity in impugned order whereby the goods processed cotton fabric found in the factory was confiscated. However, taking into the fact and circumstances of the case the redemption fine is reduced to Rs. 25,000 and Rs. 5,000. The penalty imposed on the appellant is also reduced to Rs. 30,000 otherwise the impugned order is upheld. The appeal is disposed of as indicated above.