Global Syntex Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-09-2005

Reported in : (2005)(188)ELT344Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Global Syntex

Respondent : Commissioner of Central Excise

Judgement :

1. Appellants are an assessee under the Central Excise Act and are engaged in the processing of MMF. They obtained a registration under the Act as a manufacturer for the factory effective from 12-4-2001 & under letter dated 18-4-2001 intimated the department that installation of machines are in progress and followed it up by letter dated 31-7-2001. On 16-8-2001, they filed an application for availment of Compounded Levy scheme under Rule 15 of Central Excise (No. 2) Rules, 2001 read with Notification No. 32/2001-C.E., dated 28-6-2001 and on 20-8-2001 intimated the start of production with effect from 23-8-2001 and started dyeing process.

1.2 On 19-2-2002, they received a letter from . Commissioner, informing them that the request for availment of compounded levy scheme under Rule 15 of Central Excise (No. 2) Rules, 2001 for the year 2001-02 cannot be acceded and in view of the provisions of Notification No.32/2001-C.E., dated 28-6-2001 and application was rejected by the Commissioner.

1.3 On a persistent persual of obtaining an order, a communication dated 7-3-2002 was received from Dy. Commissioner (Tech), Central Excise and Customs, Surat-I informing the rejection of Commissioner to be in view of the explanation in Paragraph 7(2) of the said Notification 32/2001-C.E., dated 28-6-2001. It also intimated that the reconsideration has lost its relevance because of withdrawal of scheme from 1-3-2002.

1.4 Duty demands were made on ad valorem basis vide letter dated 11-3-2002 from Range-1, Div. III Superintendent.

1.5 In spite of persistent requests, no appealable order was issued by the Commissioner. Hence this appeal against letter dated 19-2-2002 of Jt. Commissioner intimating the rejection by the Commissioner.

2.1 After hearing both sides and considering the material on record, it is found - (a) On a prima facie consideration, the mere Registration obtained effective 12-4-2001 without effective power operated installation of plant & machinery cannot constitute the appellant to be an existing Independent Textile Processor to be impugned by explanation X to the notification. Since a registration under Central Excise always has to proceed manufactures.

(b) From the papers on record, the Commissioner's mind in rejecting the application made and reasons thereto that also without a hearing or an appealable speaking order issued by him cannot be appreciated.

The appellant's right to appeal has been frustrated. The issue of a speaking order dismissing the claim and has resulted in a demands of duties. Commissioner in such a case where important fiscal liabilities will result has to hear and thereafter issue an order on merits giving reasons for his decision. This can be corrected now by a post-decision hearing.

(c) The present appeal, against a letter communicating the Commissioner's decision to reject the request cannot be entertained.

The appeal is returned, with directions to the Commissioner to hear the appellant and thereafter pass a speaking order. Appellants at liberty thereafter to file a copy of the said order and pursue the appeal.