

Standard Industries Ltd. Vs. Ccex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-21-2005

Judge : K Kumar, S T Chittaranjan

Appellant : Standard Industries Ltd.

Respondent : Ccex.

Judgement :

1. Heard both sides. The impugned fabric manufactured by the appellants is dot printed with HDPE. The lower authority has held that the fabric is coated fabric on the ground that 60% of the surface of the fabric is coated with dots. The appellants have pleaded that the Hon'ble High Courts of Allahabad and Gujarat [vide J.D. Patel and Anr. v. UOI 1978 ELT (J 540)] have held that in coating the intention would be to cover virtually the entire surface of the material sought to be coated, and that the process which leaves a considerable area uncovered would not be called coating. We find merit in the contention of the appellants and their reliance on the cited case laws. Hence, we are of the view that the impugned material cannot be considered as coated fabric.

2. As regards valuation, it is the claim of the appellants that for the earner period, following the Tribunal's decision in their own case, the department has accepted that there was no mutuality of interest between the appellants and M/s Mafatlal Apparels Manufacturing Co. Ltd. They also contend that even if the cost of the powder supplied to the appellants by M/s Mafatlal Apparels Manufacturing Co. Ltd. is to be taken into account for valuation of the fabric, the same has not been

worked out and ascertained by the lower authority. We find merit in the submissions made by the appellants. Accordingly, for valuation of the fabric, we remand the matter to the Commissioner for fresh adjudication who will pass a fresh order after allowing a reasonable opportunity of hearing to the appellants.

3. As regards the charges of clandestine removal, it is the case of the appellants that the goods in question were very much in the factory and the request of the appellants was pending with the authorities for additional space. In respect of the appeal No. E/3100/03, it is the contention of the appellants that no penalty clause was invoked in the Show Cause Notice and hence the imposition of penalty is not justified.

In consideration of the entire facts of the case, we set aside the confiscation and penalty ordered by the lower authority.

5. Our order as above was pronounced in the open court on the date of hearing on 21.12.2005.

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