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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-24-2006

Judge : A Wadhwa, S T S.S.

Appellant : Radha Textile and ors.

Respondent : Commissioner of Central Excise

Advocate for Pet/Ap. : Shri. Prakash Shah

Judgement :

1. All the stay applications are being disposed of by a common order, as they are directed against the same impugned order passed by Commissioner, vide which he has confirmed demand of duty of Rs. 4.17 crores (Approximately) against M/s. Usha Fasshions P. Ltd. formerly known as M/s. Indo Green Textiles Pvt. Ltd. and has imposed penalties upon the said appellant as also on the other applicants under the provisions of Rule 26 of Central Excise Rules 2002.

2. We have heard Shri Prakash Shah appearing for the appellant and find that the demand has been confirmed against the manufacturer on the basis of the details available in the records seized from transporter M/s. S.P. Thakkar Transport Co. In terms of the records maintained by the said transporter, during the period March 2001 to May 2002 M/s.

Usha Fashions Private Ltd. had transported processed fabrics in excess of the quantity reflected in their statutory records. It is seen that the said transporter had

maintained record of processed fabrics under the name "S One Dyg/Tex". The said transporter has admitted that the said name is a code name belonging to M/s. Usha Fashions. As such, the Commissioner has observed that in view of the settled position in law regarding presumptive evidence and burden of proof, the department has discharged its initial onus of showing that the goods have been clandestinely removed by the said manufacturing unit.

3. On the other hand, the appellants contention is that the entire evidence relied upon by the department is in respect of some records maintained by the transporter and seized from him. The said records do not even reflect the name of the said processing unit. The transporters explanation that the records under the name and style of 'S One Tex/Dyg' are in respect of the appellant cannot be accepted on the face of it without any other corroborative evidence. Ld. Advocate has strongly argued that apart from the above, there is no other evidence on record in the shape of procurement of raw materials, processing of grey fabrics, consuption of electricity or the ultimate buyer of the processed goods or in respect of any financial charges from their buyers. Drawing our attention to various decisions of the Tribunal, Shri Prakash Shah has vehemently argued that in the absence of such corroborative evidences, records maintained by the transporter, who is a third party, cannot be relied upon for concluding the fact of clandestine removal against the appellant. He also submits that though the transporter was asked for cross-examination so as to test the veracity of his statement, he has not been produced for the same.

4. Apart from the merits of the case, financial hardship has also been pleaded. Drawing our attention to the balance sheet, it has been contended that they have suffered loss of around Rs. 24 lakhs (Rupees twenty four lakhs only) during the financial year ending 31.3.2005 and are likely to suffer further loss of approximately Rs. 30,00,000 (Rupees thirty lakhs only) during the current financial year. As such, any direction to deposit even a part amount would amount to undue financial hardship. Hence the prayer to dispense with the condition of pre-deposit of duties and penalties.

5. After considering the submissions made by the Ld. JDR Shri U.H.Jadhav, we prima facie agree with the Ld. Advocate that the entire case of the Revenue is based upon the transporters records maintained in a different name than the appellants. There is no other corroborative evidence to show that the appellants has been indulging in clandestine processing and clearance of the grey fabrics at such a huge scale. Not even an iota of evidence to that effect has been produced on record by the revenue. As such, we are of the view that the appellant has been able to make a goods prima facie case in its favour so as to allow all the stay petition unconditionally. We order accordingly.

6. Inasmuch as. the huge revenue is involved, we would like to place the appeals for final disposal on out of turn basis. The same are accordingly fixed for hearing on 24/4/2006.

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