

Unique Creations Ltd. Vs. Ccex

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-31-2006

Reported in : (2006)(111)ECC103

Judge : J Balasundaram, Vice-, S T Chittaranjan

Appellant : Unique Creations Ltd.

Respondent : Ccex

Judgement :

1. Heard both sides. The duty liability in respect of the appellants was fixed under the provisions of Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998. The appellants filed a declaration on 16.12.1998 declaring two stenters with five and four chambers. They had also declared that one of the stenter is working and other is sealed and accordingly provisional capacity was fixed and communicated to them on 23.12.1998. On 15.1.1999, the appellants intimated that one stenter having five chambers was sealed on 20.12.1998 and sought permission for dismantling the said stenter.

On 3.2.1999, permission was granted to dismantle the said stenter and on 12.2.1999, the appellants intimated that seal of the stenter with five chambers was opened on 9.2.1999 and it was dismantled on 12.2.1999 but subsequent verification showed that it was dismantled only on 9.3.1999. Accordingly, while fixing annual capacity, the duty liability was reduced w.e.f. 9.3.1999 only.

2. The appellants have contended that they are not liable to pay duty in respect of the five chambers, which were dismantled earlier, even though the stenter itself was dismantled at a later date. We find that the adjudicating Commissioner has confirmed the duty demand for the period the stenter itself was not dismantled with the following observations: During the period for which the duty liability has been fixed under Hot Air Stenter Independent Textile Processor's Annual Capacity Determination Rules, 1998, the processor is free to apply for abatement of duty in respect of stenter which were closed for more than 7 days as per Rule 96ZQ(7) if the conditions prescribed therein are fulfilled. I find that the noticee has not filed any abatement claim during the period till date. However the Board has issued instruction under letter F.No. 201/20/99 CX-6 (circular No. 485/51/99-CX) dated 15.9.99 that where stenter was closed on 16.12.98 itself the advance notice for 3 days for closure does not arise and also that abatement may be given if found eligible even if duty for closure period beyond 7 days was not paid. In this case the Dhall stenter with 5 chambers was already in sealed condition on 16.12.98 as intimated in the declaration dated 16.12.98 and it was resealed on 20.12.98. This stenter continued in sealed condition till 8.2.99. The seal was opened on 9.2.99 for dismantling.

According to the notice the stenter was dismantled on 12.2.99.

However, the department has verified the position and according to the verification report the Dhall stenter was completely dismantled on 9.3.99. Therefore the notice is not eligible for abatement from 9.2.99 onwards as they have not dismantled it as claimed by them till 9.3.99 and it was not sealed. Therefore after giving abatement for the period from 16.12.98 to 8.2.99, the duty payable comes to Rs. (23,32,350-14,25,045) = Rs. 9,08,305/-. They are required to pay differential duty of Rs. 9,08,305/- out of Rs. 23,32,350/- as worked in Annexure 'A' to the show cause notice under Rule 96ZQ(5)(i) of Central Excise Rules, 1944. They are also required to pay interest @36% per annum on the aforesaid outstanding duty of Rs. 9,08,305/- under Rule 96ZQ(5)(i) of Central Excise Rules, 1944 from March 1999.

Further, I find that they failed to discharge full amount of Central Excise duty liability as fixed by the Commissioner, Ahmedabad-I after allowing abatement on

the specified dates as mentioned in column No. 5 of Annexure A to show cause notice. Thus, they contravened the provisions of Sub-rule (3) of Rule 96ZQ of Central Excise Rules, 1944. Therefore, they are liable to penalty under Rule 96ZQ(5)(ii) of Central Excise Rules, 1944.

3. It has been argued on behalf of the appellants that the basis of computing the duty under the Compounded Levy Scheme is based on the capacity of chambers and for the period the chambers were dismantled, they are not liable to pay duty. We find that the Compounded Levy Scheme is an alternative scheme of taxation, with self contained rules and procedures. Under the rules, the Commissioner has determined the annual capacity of production and fixed the duty liability accordingly.

Under Rule 5 of the Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998, in case an independent processor wants to make any change in the installed machinery, which changes the parameters, he is required to intimate the changes to the Commissioner and he is required to obtain a written approval of the Commissioner before making such changes, after which, the Commissioner is required to re-determine the duty liability from a date on which the change in the annual capacity is deemed to be effected.

4. In the instant case, the stenter was not dismantled till 9.3.1999.

We find that the rules do not envisage the appellants reducing their duty liability on their own but only when the same is approved by the Commissioner. There is also a provision under Rule 96ZQ for granting abatement on complete closure of the Hot Air Stenter containing the chambers but not in case of closure of one or more chambers. Since in this case, the stenter in dispute, was not dismantled till 9.3.1999 and remained open, the appellants are also not eligible for abatement till such date. We also find that under Trade Notice dated 22.2.1999, reports are required to be submitted by the Assistant Commissioner, both in respect of dismantling of the chambers as well as dismantling of the stenter and such reports are vital for enabling the Commissioner for reducing the duty liability. In respect of the appellants, such a report was given only for dismantling of the stenter on 9.3.1999.

5. In view of the above, we are of the opinion that the adjudicating Commissioner is justified in reducing the duty liability in respect of the appellants only from 9.3.1999, the date on which the stenter itself was dismantled and not for the earlier period. We are also of the view that the appellants were not justified in reducing their duty liability suo moto and paying less duty. Accordingly, we uphold the duty demand against the appellants and hold that they are also liable to pay the interest as per law. However, considering the facts and circumstances of the case, we are of the view that the quantum of penalty amount of Rs. 9,08,305/- (rupees nine lakhs eight thousand three hundred five), which has been imposed, is excessive and hence we reduce the same to Rs. 2,00,000/- (rupees two lakhs).

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