Shree Balaji Processing and Vs. Commr. of C. Ex.

Shree Balaji Processing and Vs. Commr. of C. Ex.

SooperKanoon Citation : sooperkanoon.com/43328

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-03-2006

Judge : J Balasundaram, Vice-, S T C.

Appellant : Shree Balaji Processing and

Respondent : Commr. of C. Ex.

Judgement :
1. In this case a duty demand of Rs. 1,22,513/- together with interest, has been confirmed on fabrics processed by Shree Balaji Processing & Printing Mills seized fabrics have been confiscated with option of redemption, deemed credit of Rs. 31,858/- has been directed to be recovered and penalty of an amount equal to duty has been imposed.

Personal penalty of Rs. 50,000/- has been imposed on the 2nd appellant who is the Proprietor of the processing mills.

3. The duty demand has been confirmed on the ground that grey fabrics processed by the mills were under-valued. The first contention of the appellants that they are not the manufacturers for the reason that someone-else viz. M/s. Fidahusain Haji Bandehasan Textile Processors was the owner of the processing unit, and the appellants were only endorsed on the Central Excise Registration Certificate issued to the unit Owner, is not tenable in the light of the definition of the expression 'manufacturer' in Section 2(f) of the Central Excise Act, 1944, according to which the manufacturer is a person who actually manufactures or

produces any excisable goods or carries on any process incidental or ancillary to their completion, even if he does not directly engage himself in the manufacturing activity but employs hired labour for that purpose. There is no dispute that the appellant's mills were running the factory and processing grey fabrics. Therefore, they are actual manufacturers. No argument is raised on basic issue of under-valuation of grey fabrics. The only plea raised is that the demand is barred by limitation for the reason that the appellant mills were not guilty of suppression or mis-declaration/mis-statement and the mis-statement of value of grey fabrics was by the merchant manufacturer, who has supplied grey fabrics to them. However, we do not see any force in this submission, as it has been admitted by Shri Gopal B. Sarda that the price declared in the price declaration submitted by the jurisdictional Excise authorities was at a lower rate than the actual rate of grey fabrics purchased, unlike in the case of Nikharka Dyeing & Printing 2006 (193) E.L.T. 307 relied on by appellant's Counsel, where no such admission existed. Therefore, the extended period of intimation is available to the Department against the appellants.

4. The plea of Shri Gopal B. Sarda that the order has been passed in contravention of the principles of natural justice, as the copy of his statement, which has been relied upon in the show cause notice, and the orders of the authorities below, was not given to him, is not acceptable, as this point has not been raised in the appeal before Tribunal.

5. We, therefore, uphold the duty demand and confiscation. Penal action against the mills is also warranted. However, having regard to the totality of the facts and circumstances of the case, including the duty amount involved, we reduce the penalty on the Processors to Rs. 30,000/-. Penalty on Shri Gopal B. Sarda is however, set aside, for the reason that he is the Proprietor of the first appellant mills and in law, penalty cannot be imposed both on the Proprietary concern and its Proprietor.

6. In the result Appeal No. E/2040/01 filed by Shree Balaji Processing & Printing Mills is partly allowed, while Appeal No. E/2039/01 filed by Shri Gopal B. Sarda is allowed in toto.