Commissioner of Central Excise Vs. Shree Khemisati Processors

Commissioner of Central Excise Vs. Shree Khemisati Processors

SooperKanoon Citation : sooperkanoon.com/43645

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-12-2006

Judge : A Wadhwa, V T M.

Appellant : Commissioner of Central Excise

Respondent : Shree Khemisati Processors

Judgement :

1. Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has referred the present appeal.

2. After hearing both the sides, we find that the respondent is engaged in the manufacture of fabrics. In terms of the provisions of Rule 96 ZQ read with Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998, the Commissioner fixed their Annual Capacity of Production vide his order dt. 15.7.1999. The said capacity was fixed by taking into account the length of the galleries. The said order of fixation was challenged by the respondents before Tribunal, though they continued to discharge their duty liability in accordance with the ACP so fixed. The Tribunal vide its order dt. 19.6.2000 set aside the ACP fixed by Commissioner and remanded the matter for re-determining the annual capacity and consequent duty liability of the said assessee, after consulting the technical expert and the evidence on record.

3. As the order fixing ACP was set aside by the Tribunal and the same was not fixed by the Commissioner in de novo proceedings, assessee filed refund claims

of Rs. 4,08,000/-, being the amount paid by them in respect of galleries for the period September 1999 to January 2000. The said refund claims were rejected by the original adjudicating authority on the ground that the same are premature inasmuch as, the ACP does not stand fixed by the Commissioner in de novo proceedings. On appeal against the above order, Commissioner (Appeals) observed that inasmuch as there was no order of ACP fixed by the Commissioner, earlier order having been set aside by the Tribunal, the excess payment made by the assessee on account of inclusion of length of galleries, is required to be refunded. Accordingly, he set aside the order-in-original and allowed the appeal. Hence the present appeal.

4. We are informed that in spite of the fact that the Tribunal's order was passed in the year 2000 and almost a period of six years has passed, the ACP does not stand fixed by the Commissioner in de novo proceedings. The original adjudicating authority, instead of rejecting the claim, as premature, should have awaited for refixation of ACP.There is no justifiable reason produced on record for non action on the part of the authority required to fix the ACP. In the meanwhile, the issue as to whether length of galleries is required to be included while fixing the Annual Capacity of Production stands decided by the Hon'ble Supreme Court in the case of Commissioner of Central Excise Jaipur v. S.P.B.L Limited payment made by the assessee on the basis of the ACP fixed by taking galleries length into account is required to be refunded to them subject to other provisions of law. However, inasmuch as, the earlier remanded matter has not been decided by the Commissioner till date, we would like to remand the present matter also to commissioner for adjudication along with the earlier remanded matter. He would fix the ACP and resultant duty liability of the assessee and would adjust the payments already made by the assessee. Accordingly, we would expect the Commissioner to do the needful within a period of two months from the date of receipt of the present order. Respondents are at liberty to approach the Tribunal, in case the said order has not implemented by the Revenue authorities, in terms of the directions, as contained above.