

Commissioner of Central Excise Vs. Laxmi Prints

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-14-2006

Judge : J Balasundaram, Vice-, V T M.

Appellant : Commissioner of Central Excise

Respondent : Laxmi Prints

Judgement :

1. All the respondents in the above appeals are traders having shops, who purchase grey fabrics and get them processed by processors and then sell them from their premises. Processed fabrics were seized from each of the respondents on the ground that they had received the goods back from processors without cover of Central Excise invoice and without payment of Central Excise duty leviable thereon. Statements of officers of the respondents were recorded in which they admitted that no duty had been paid on the processed fabrics. Show cause notices were issued proposing confiscation of seized goods, recovery of additional duty of excise on seized goods and proposing penal action. The adjudicating authority passed separate adjudication orders in respect of the respondents, upholding the charges levelled in the show cause notices by ordering confiscation of seized goods with option to redeem the same on payment of fine, confirming duty liability and imposing penalties of different amounts. The Commissioner (Appeals), however, set aside the adjudication orders holding that the respondents are not the manufacturers as they are only suppliers of grey fabrics and the processor is the manufacturer in the light of the Apex Court judgment in the case

of Ujjagar Prints v. UOI Name Tulaman Manufacturers . He, therefore, set aside the confiscation and duty demand and penalty, hence, these appeals by the revenue.

2. We have heard both sides. We find that the law is well settled that in the case of processing houses, they are liable to pay duty of excise because they bring about the manufacture of the goods. Therefore, the reliance placed by the revenue on Notification No. 27/92. which provides exemption from the operation of registration required under Rule 174 subject to the condition that the manufacturer authorizes the person, who actually manufactures the goods to comply with all procedural formalities under the Central Excise Act and Rules made thereunder, to contend that in the present case, since the respondents have not authorized the processor in terms of the Notification, it is the respondents, who would be liable for duty payment, is not tenable in the light of the Tribunal's order in the case of Vadilal Embroidery Unit v. CCE, Mumbai-II , wherein the Tribunal has held that Notification No. 27/92 is relevant only for application or otherwise of Rule 174 and has nothing to do with the payment of duty, and the decision in the case of CCE, Surat v. Kalpana Silk Mills , holding that grey fabrics supplier (merchant manufacturer) is not manufacturer and is not liable to pay duty short paid by processor/job worker. No contrary decision has been brought to our notice by the Ld. SDR. We, therefore, uphold the finding of the lower appellate authority that the respondents cannot be saddled with any duty liability as they are not the manufacturer of the goods in question. We, therefore, reject the prayer of the revenue for upholding the adjudication order in so far as it relates to duty confirmation against the respondents.

3. As regards confiscation, we are of the view that it is required to be upheld as processed fabrics were admittedly received by the respondents knowing that they had not discharged the duty liability.

The respondents are also liable to penalty under the provisions of Rule 173Q/209A as they have dealt with the goods (processed fabrics) with the knowledge that such goods were liable to confiscation for the reason that they had been cleared by the processors without payment of duty. We, therefore, hold that

the respondents herein are liable to penalty and restore the adjudication orders in so far as they relate to imposition of penalty.

4. In the result, we sustain the Commissioner (Appeals)'s finding that no duty can be recovered from the respondents but set aside his finding that the respondents are not liable to any penalty. In the result, the appeals of the revenue are partly allowed in the above terms.

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