

Jindal Texo Fab. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-16-2007

Reported in : (2007)(123)ECC180

Judge : P Das

Appellant : Jindal Texo Fab. Ltd.

Respondent : Cce

Judgement :

1. The appellants are engaged in the processing of cotton and man made fabrics and working under the Compounded Levy Scheme under Section 3A of the Central Excise Act, 1944. They were liable to discharge the duty for the month of May, 2000 as on 31.5.2000. It has been alleged that the appellant discharged duty on 1.6.2000 instead of 31.5.2000. The adjudicating authority had gone through TR-6 challan No. 03/2000 dated 29.5.2000 for an amount of Rs. 4 Lacs. It has been observed that the dated stamp of the Bank of Baroda, Service Branch is 1.6.2000 and the date of tendering the amount is written as 31.5.2000. The adjudicating authority dropped the proceedings because the appellant tendered the cheque on 31.5.2000 within the stipulated period. The department filed appeal before the Commissioner (Appeals). By the impugned order, the Commissioner (Appeals) set aside the adjudication order and allowed the department's appeal. He observed that there is clear default by the appellant in making payment for the month of May, 2000 as they paid on 1.6.2000 instead of 31.5.2000. He also observed that the department is correct in saying that penalty of equal amount of

duty outstanding at the end of the month is imposable.

2. The learned advocate on behalf of the appellant submits that the issue is already covered by the decision of the larger Bench of the Tribunal in the case of CCE, Jaipur-1 v. Genus Overseas electronics Ltd. 2003 (56) RLT 759 (CEGAT-L.B.). He also relied upon the Board's circular No. 86/2003-Cus., dated 3.10.2003.

3. The learned D.R. reiterates the findings of the Commissioner (Appeals).

4. After hearing both the sides and on perusal of the record, I find that there is no dispute that the appellant tendered the cheque on 31.5.2000. The larger Bench of the Tribunal in the case of CCE, Jaipur-1 v. Genus Overseas Electronics Ltd. (Supra) held that the date of presentation of cheque or draft to bank and not date of its clearance is date of payment of duty provided it is not dishonoured. It is seen that CBEC vide Circular No. 86/2003-Cus. dated 3.10.2003 clarified that in respect of Central Excise duty and Service Tax, the date of payment will be the date of presentation of the cheque in the bank subject to realization of the cheque. In the present case, the adjudicating authority observed the date of tendering of the cheque as on 31.5.2000. In view of the decision of larger Bench of the Tribunal as well as Board's circular, the date of the presentation of the cheque would be taken into account which is 31.5.2000 in this case. It is pertinent to note that the cheque was not dishonoured by the bank.

Hence, I do not find any irregularity in Adjudication Order. Therefore, the order of the Commissioner (Appeals) is set aside and the adjudication order is upheld.

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