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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-15-1995

Reported in : (1996)(82)ELT285TriDel

Appellant : Avinash Chander Anil Kumar Jain

Respondent : C.C.E.

Judgement :

1. This appeal is directed against the order, dated 1-1-1987 passed by the Additional Collector of Central Excise, New Delhi. Briefly facts of the case are that the Central Excise Officers visited factory of the appellants on 18-9-1984 and found that they were engaged in the manufacture of grey cotton/polyester (52 : 48) blended fabrics on powerloom falling under Tariff Item 19(I)(a) of the Central Excise Tariff. The Officers found that the appellants had not obtained Central Excise Licence for the manufacture of grey cotton/polyester blended fabrics and had also no permission from the Textile Commissioner for installation and working of the powerlooms. Shri Anil Kumar Jain, partner of M/s. Avinash Chander Anil Kumar gave a statement on 18-9-1984 saying that they were sending grey cotton/polyester blended fabrics manufactured by them for processing to M/s. Sunflag Textile Ltd., Faridabad and after dyeing and finishing the goods were brought back. On 1-10-1984 the Officers visited premises of M/s. Sunflag Textile Ltd. a quantity of 7616.60 Mts. of cotton/polyester (52 : 48) blended fabrics lying at various stages for processing sent to M/s.

Sunflag Textile Ltd. by the appellants were seized. The Officers examined the records of the appellants and found that they had cleared 37712.40 mts. of grey fabrics without payment of duty valued at Rs. 12,92,209.58. The duty demand amounted to additional duty of excise of Rs. 25,844 + Additional duty of excise on cotton (cess) Rs. 857.59. The proceedings were initiated by the issue of show cause notice and after hearing in the matter the Collector held that duty as demanded in the show cause notice was sustainable and also held that fabrics seized in the premises of Sunflag Textile Ltd. were liable for confiscation but since the goods had been provisionally released the Collector appropriated amount of security deposit of Rs. 4,500/- towards fine in lieu of confiscation. For having cleared grey fabrics without payment of duty the Collector confirmed demand of duty of Rs. 26,701.78 and imposed penalty of Rs. 50,000/- on the appellants.

2. Shri Joseph Vellapully, learned Senior Counsel for the appellants submitted that in this case the appellants were sending grey fabrics for processing and classification list filed by the processor is on record. It was contended that this classification list would show that processor was doing job of such processing of the appellants. There is an undertaking of the processor in the classification list on behalf of the appellants that the processor agreed to discharge all the liability of Central Excises & Salt Act, 1944. The learned Counsel submitted that duty had been duly paid by the processor of the goods therefore there was no loss of revenue. The confirmation of the demand under Rule 9(1) of the Central Excise Rules was assailed on the ground that there was no clandestine removal. The demand further was mostly time-barred as it was for the period May, 1984 to September, 1984 issued on 8-3-1985. In any case there was not justification to impose penalty on the appellants.

3. Shri Vijay Singh, learned SDR contended that the exemption under Notification No. 253/82 had been rightly denied as no duty has been paid on grey fabrics.

4. On a careful consideration of the submissions made by both sides it is seen in the case of Ujagar Prints v. Union of India reported in 1988 (38) E.L.T. 535 Hon'ble Supreme Court has held that the job workers or processing houses became liable to pay duty not because they are the owners of the goods but because they cause

the manufacture of the goods. Supreme Court held in view of the Section 4 of the Central Excises & Salt Act and the Valuation Rules, it cannot be said that assessable value of the processed fabrics should comprise only of the processing charges. It has held that the assessable value of the goods at the hand of processor will not be processing charges only but intrinsic value of the processed fabrics which is price at which fabrics are sold for the first time in the wholesale market. In other words, the Supreme Court held that assessable value would therefore include the value of the material supplied to the processor plus the value of job work done plus manufacturing profits and manufacturing cost would be includible in the price at the factory gate. The correct assessable value according to the Supreme Court must be the value of the fabrics at the factory that is to say, the value at which the manufactured goods leave the factory and enter the main stream. In this case the Department has found no duty had been paid on the grey fabrics by the appellants. The Appellants had said in their reply to the show cause notice dated 23-4-1983 that if they had known additional excise duty is payable on the grey fabrics they would have cleared the goods on such payments. The present procedure [was] adopted by them only because of belief [that] additional excise duty was leviable only on the processing stage. It has also not been shown [that] grey fabrics had discharged duty as laid down in the Supreme Court decision in the case of Ujagar Prints. On the aspect of limitation since movement of fabric had been under cover of D 3 intimation to the Department the plea that extended period of limitation for demanding duty cannot be invoked has lot of force. Therefore the duty beyond six months is hit by the bar of limitation. Having regard to the circumstances of the case the quantum of penalty also needs to be lowered and it is accordingly reduced to Rs. 10,000/-. Appeal is disposed of in the above terms.