

GRAM: CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH - NB(SM)

Appeal No. E/1677/99/NB(SM)

Dated: 16/2/2001

CEGAT
NEW DELHI

To,

M/s Ashoka Dyeing & Finishing Mills
123-C, Phase - D, Focal Point
Ludhiana - (Punjab)

In the matter of :

M/s Ashoka Dyeing & Finishing Mills

Appellant

vs.

CCE Chandigarh

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/278/01/NB(SM)

Dated : 15/2/2001 passed by the Tribunal under Section 35-C(1) of Central Excise & Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

Asstt. Registrar

1. CCE Chandigarh

NB(SM)

2. CCE / CC / (Appeal) Chandigarh

3. Chief Commissioner of Central Excise / Customs. Chandigarh

4. Adv. / Consult. C. S. Bhangoo, ADV
Kothi No 5 Sector - 10A
Chandigarh

5. S.D.R. NB(SM)

6. JCDR

7. Bar Association, CEGAT, New Delhi

8. Library, CEGAT, New Delhi

9. Director (Review), C.B.E.C. North Block, New Delhi

10. Guard File.

11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.

12. M/s Centax Publications (P) Ltd., 1512-E, Bhisim Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003

13. M/s Lex Site Com. Ltd., Mumbai

14. Office Copy

15. Clk - 100

Asstt. Registrar NB(SM)

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,
NEW DELHI.

E/APPEAL NO. 1677/99-NB(S)

(Arising out of Order-in-Appeal No. 4/CE/Chd./99 dated
4.1.99 passed by the Commissioner of Central Excise
(Appeals), Chandigarh).

M/s. Ashoka Dyeing &
Finishing Mills

Appellant
(Sh. K.K. Anand, Advocate)

vs

C.C.E., Chandigarh.

Respondent
(Sh. M.D. Singh, SDR)

FINAL ORDER NO. A/278/01/NB(CE/M)
(Dated the Feb. 2001)

PER S.S. KANG :

The appellants filed this appeal against the
order-in-appeal passed by the Commissioner (Appeals)
whereby the appeal filed by the appellants was
dismissed.

Brief facts of the case are that the
appellants are engaged in the processing of man-made
and knitted acrylic fabric. On 13.10.95, the Central
Excise officers visited the factory of the appellants
and on verification of the stock it was found that the
raw-material 375 mtrs. of man-made grey fabric was
found short and man-made fabric weighing 2968 kg. was
found in excess to their statutory record. A show
cause notice was issued to the appellants for
confiscation of man-made fabric found excess and for
demand of duty on the goods, found short, imposed a
penalty.

The adjudicating authority ordered

confiscation of 2968 kg. of man-made fabric under Rule 173 Q of the Rules and gave an option to redeem the goods on payment of redemption fine of Rs. one lakh. A demand of Rs. 2,300/- was confirmed in respect of the goods found short and penalty of Rs. 10,000/- was imposed on the appellants.

Ld. Counsel, appearing on behalf of the appellants, submits that the goods, found in excess, were purchased by the appellants for the first time which were received in the factory late in the evening on 12.10.95. As the officers of the revenue department reached the factory at 0800 hrs on 13.10.95, these were not entered in their statutory record. The contention of the Counsel is that there is no evidence to show that this quantity of fabric had been subjected to any dutiable process in the factory. He, further, contended that when the goods were found in the factory, they were not liable for confiscation under the provisions of Rule 173 Q of the Rules. For this, he relies upon the decision of the Tribunal in the case of Bhillai Conductors (P) Ltd. vs C.C.E., Raipur reported in 2000 (91) ECR 569.

In respect of grey fabric found short, he submits that the appellants were processing grey fabric and from this process, the fabric was subjected to shrinkage and no benefit of exemption was available in respect of

shrinkage was given. He, therefore, prays that the appeal be allowed.

Heard ld. D.R., who reiterates the findings of the lower authorities.

The contention of the appellants in respect of the goods, found in excess, was that they purchased this fabric from the market on 12.10.95 and the goods reached the factory late in the evening. The appellants had not produced any evidence, documentary or otherwise, in respect of this contention. The other contention of the appellants is that the goods were liable for confiscation under Rule 173 Q of the Central Excise Rules. As the goods were found in the factory, there was no attempt by the appellants to remove the goods without payment of duty. The appellants relies upon the decision of the Tribunal in the case of Bhillai Conductors (P) Ltd. (supra). In this case, the hon'ble Tribunal held that when the goods were found in excess in the factory and there is no mens rea on the part of the assessee to remove the goods without payment of duty, the goods cannot be confiscated under Rule 173 Q of the rules and the assessee is liable for penal action under the provisions of Rule 226 of the Rules. The provisions of Rule 226 of the Rules also provides for confiscation of the goods which were not

accounted in the statutory record and a penalty of Rs. 2,000/- is provided for this lapse. Therefore, if the goods were ^{not} liable for confiscation under Rule 173 Q of the Rules, the goods are liable for confiscation under Rule 226 of the Rules. However, taking into consideration the facts and circumstances of the case, the redemption fine of Rs. one lakh is reduced to Rs. 25,000/-.

In respect of grey fabric, found short, the contention of the appellants is that the grey fabric during the process undergone shrinkage and in respect of this shrinkage no benefit is given. The appellants had not produced any evidence in respect of percentage of shrinkage during the process of man-made grey fabric., nor he has produced any technical literature in respect of this. I, therefore, find no force in the arguments of the appellants. After taking into consideration the facts and circumstances of the case, penalty of Rs. 10,000/- is reduced to Rs. 2,000/-, otherwise, the impugned order is up-held. The appeal is disposed of as indicated above.

(S.S. KANG)
MEMBER (JUDICIAL)

dt. 15 Feb., 2001
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