

CASE NO.:
Appeal (civil) 2516 of 2002

PETITIONER:
Commissioner of Central Excise, Mumbai

RESPONDENT:
Lajya Dyeing & Bleaching Works

DATE OF JUDGMENT: 19/02/2008

BENCH:
ASHOK BHAN & J.M.PANCHAL

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO.2516 OF 2002

Respondent-assessee, hereinafter referred to as the 'assessee', was a job worker and was engaged in the processing of fabrics falling under Chapter heading 54 & 55 of the First Schedule to the Central Excise Tariff Act, 1985 (for short 'the tariff Act'). Assessee had accepted the declaration filed by the merchant manufacturers who was supplying fabrics to the assessee and gave an undertaking that it would comply with all the requirements and discharge all the liabilities under the Central Excise Act, 1944 (for short 'the Act').

As per notification No.254/87 as amended by Notification No.57/89 dated 1.3.1989, benefit of concessional rate of duty is available to a man made fabrics containing polyster below seventy percent. Assessee filed classification lists declaring the man made fabrics containing polyster below 70%. The said classification lists were approved by the Assistant

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Collector, Central Excise believing that the statement of the assessee given in the classification lists was true and correct.

Samples were collected from the assessee-company and they were got chemically tested which indicated that they were having polyster above 70% and thus would attract higher rate of duty and the assessee company had mis-declared the contents of the fabrics at the time of filing the classification lists with deliberate intention to evade payment of excise duty.

Consequently, a show cause notice dated 4.3.1993 invoking the extended period of limitation under Section 11A was issued to the assessee for the period 04.03.1989 to 16.01.1990 demanding differential duty of Rs.14,80,269.25 and also asking them as to why a penalty should not be imposed under the Central Excise Rules, 1944.

The assessee had replied to the show cause notice vide its letter dated 7.9.1993 stating that the declarations given by merchants were relied upon and submitted to the department as prescribed by Notification No.305/77 and that the charge of mis-declaration was not tenable and therefore the demand was time barred.

The adjudicating authority held that "it is presumed that assessee is also a party to the mis-

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declaration in respect of the composition of the fabrics" and confirmed the demand of Rs.14,80,269.75 on the assessee and imposed a penalty of Rs.1 lakh on the assessee. He also imposed a penalty of Rs.5,000/- each on the merchant manufacturers. Appeal filed by the assessee before the Commissioner(Appeal) was rejected.

In further appeal to the Tribunal, the Tribunal, relying upon an earlier decision

of the Tribunal in the case of Paras Prints Pvt. Ltd. vs. Commissioner of Central Excise, Surat reported in 2000 (120) ELT 662 (Tribunal), held that in the absence of any allegation in the notice or finding of the Commissioner that the appellant knew or deliberately failed to declare the correct cost of the grey fabrics and also there being no legal requirement for the processors to verify the correctness of the declaration furnished by the owners, extended period of limitation is not applicable.

The finding recorded by the Tribunal is a finding of fact which does not call for any interference.

The Appeal is dismissed. No costs.

JUDIS