CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 146 of 2011

[Arising out of OIA-336-344-2010-AHD-I-CE-MM-COMMR-A—AHD passed by Commissioner of Central Excise-AHMEDABAD-I]

M/s Jay Ambe Textiles **....Appellant**
C/O Kanha Exim, Plot No 128-132, Nr Gulabnagar,
Opp Gujarat Farm, Suez Farm Road, Behrampura
Ahmedabad,Gujarat-380022.

VERSUS

C.C.E. Ahmedabad-i **....Respondent**
C. Ex Bhavan,Nr Panjrapole & Polytechnic,
Ambavadi, Ahmedabad,Gujarat-380015

WITH

(i) Excise Appeal No. 147/2011 (Jay Ambe Textiles) (ii) Excise Appeal No. 148/2011 (Jay Ambe Textiles) (iii) Excise Appeal No. 149/2011 (Jay Ambe Textiles) (iv) Excise Appeal No. 150/2011 (Jay Ambe Textiles) (v) Excise Appeal No. 151/2011 (Jay Ambe Textiles) (vi) Excise Appeal No. 152/2011 (Jay Ambe Textiles) (vii) Excise Appeal No. 153/2011 (Jay Ambe Textiles) (viii) Excise Appeal No. 154/2011 (Jay Ambe Textiles)

[Arising out of OIA-336-344-2010-AHD-I-CE-MM-COMMR-A—AHD passed by Commissioner of Central Excise-AHMEDABAD-I]

APPEARANCE:

None for the Appellant
Sh. Gobind Jha Authorized Representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO.A/ 11076-11084 /2019

DATE OF HEARING: 03.07.2019
DATE OF DECISION: 09.07.2019

PER: RAMESH NAIR

The brief facts of the case are that the appellant are an independent Textile Processor and are engaged in the processing of cotton fabrics, MMF under chapter 52, 54 and 55 of Central Excise Tariff 1985. The fabric processed by the appellant have been specified under notification no. 41/98-C.E.(NT) as notified goods on which there shall be levied and collected duty of excise in accordance with the provisions of section 3A of Central Excise Act 1944 at the rate specified under notification number 19/2000-C.E. dated 01/03/2000. Accordingly the appellants were covered at the relevant time and were required to pay duty in accordance with these provisions. The Deputy Commissioner of Central Excise vide letter dated 16/02/2001 finally fixed APC and duty liability for the year 2000/2001 in respect of specified fabrics manufactured by the appellant under section 3A of Central Excise Act 1944 read with Hot Air Stenter Independent Textiles Processors Annual Capacity Determination Rules, 2000 according to which the appellant is required to pay duty of Rs. 7,14,754/- per month. However, the appellant have short paid duty at the rate of Rs. 1,14,754/-. The contention of the appellant before the lower authority was that the short paid duty represents the drying cylinder of the machine which was not at all attached with stenter, therefore, the duty attributed the drying cylinder is not payable by them. However, the adjudicating authority confirmed the demand in respect of various show cause notices and the Ld. Commissioner (Appeals) filed by the appellant upheld the orders in original. Therefore, the present appeal.

2. None appeared on behalf of the appellant despite adjournments on various dates i.e. 2/4/2019, 22/4/2019 and 17/5/2019.

3. When today the matter was called, neither anyone appeared nor any adjournments request is placed on record. Therefore, we proceed with the matter.

4. Shri. Govind Jha, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the findings of the impugned order. He also placed a copy of the judgment in the appellant's case reported at Commissioner of Central Excise, Ahmedabad vs Jai Ambe Textiles 2005 ELT 142 (Tri.-Ahmd).

5. We have carefully considered the submissions made by the Learned AR and perused the records. We find that the dispute is revolving on the point that whether the drying cylinder is part of the Hot Air Stenter or is separate from the stenter machine. The appellant in the grounds of appeal heavily raised this point that whether the drying cylinder is attached to stenter or otherwise. The department has not provided the documents to the appellant before deciding the issue. It is also submitted that the appellant have challenged the original order fixing the annual production capacity and duty liability wherein the matter has reached to this Tribunal and the Tribunal has remanded

matter to the Commissioner, therefore, in this situation the demand should not have been confirmed. We find there is nothing on record that what is the outcome of original fixation of APC and consequent duty liability. We find from the record that that matter was remanded to the Commissioner. Moreover, there was a contention all along by the appellant that the drying cylinder is not attached to the stenter, therefore, the same should not have been included while deciding the APC. This being a matter of fact, needs to be examined by following the principles of natural justice. In this regard whatever documents were relied upon by the department may be provided to the appellant. In this situation, we are of the view that the matter needs to be reconsidered on both the aspects, (i) the status of the reconsideration of annual production capacity and (ii) the facts regarding whether drying cylinder is attached to stenter or otherwise. Therefore, we set aside the impugned order and remand the matter to adjudicating authority for passing fresh orders by considering our above observations. The appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 09.07.2019)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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