

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

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 10900 of 2016

[Arising Out Of OIO-DMN-EXCUS-000-COM-014-15-16 Dated-03/02/2016 Passed By
Commissioner of Central Excise, Customs and Service Tax-DAMAN]

Fiberweb India Ltd

.....Appellant

Survey No. 92-93/B, Daman Industrial Estate,
Kadaiya, Village-Daman,
DAMAN, DAMAN (UT)

VERSUS

C.C.E. & S.T.-Daman

.....Respondent

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

WITH

CUSTOM Appeal No. 10901 of 2016

[Arising Out Of OIO-DMN-EXCUS-000-COM-014-15-16 Dated-03/02/2016 Passed By
Commissioner of Central Excise, Customs and Service Tax-DAMAN]

Gopalan Ravindran

.....Appellant

Director, M/S Fiberweb India Ltd., Survey No. 92-93/B,
Daman Industrial Estate, Kadaiya, Village-Daman,
Daman, Daman (Ut)

VERSUS

C.C.E. & S.T.-Daman

.....Respondent

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

APPEARANCE:

Shri. P P Jadeja, Advocate for the Appellant

Shri. Kalpesh P Shah, Assistant Commissioner (AR) for the Respondent

CORAM:

HON'BLE MEMBER (TECHNICAL), MR. RAJU

HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO. A / 11176-11177 / 2023

DATE OF HEARING:11.05.2023

DATE OF DECISION: 06.06.2023

SOMESH ARORA

The appellant is 100% EOU engaged in the manufacture of Polypropylene Spun Bond Non-Woven Fabrics. They imported raw-material "Polypropylene" from Singapore for use in manufacture for the final product. They also made DTA clearances during the impugned period of 01 August, 2009 to 31.03.2015 as per permission accorded to them by the Development Commissioner after processing the raw-material on payment of applicable Customs Duties as per Section 3(i) of the Central Excise act, 1944. The show cause notice was issued to them on 19.06.2015 demanding Anti Dumping Duty on imported "Polypropylene" used for the manufacture of finished goods and the same was demanded by invoking provision of Notification No. 5/94-CUS read with Notification No. 52/2003-CUS dated 31.03.2003 read with Section 9A (2A) (ii) of Customs Tariff Act, 1975. It was adjudicated against the appellant company and its director and has led to the present appeal by the aggrieved persons.

2. Learned Counsel for the appellant relied upon various case law to emphasise that when the goods are cleared in DTA, the Anti Dumping Duty could not be levied on raw material brought under bond, as goods were not having same characters after manufacturing process as the original raw material which was imported. The Counsel relied upon the following Judgments:-2008 (224) ELT 113 (Tri. Ahmd.)- C.C, KHANDLA Vs. RAM KRISHNA EXPORTS and also 2013 (290) ELT 372 (Tri. LB)- KUMAR ARCH TECH PVT. LTD vs. CCE, JAIPUR-II to indicate that once the goods are manufactured and cleared in DTA by EOU, only Central Excise Duty could be levied on the clearance and same is determined according to aggregate of Customs Duty applicable and therefore the demand of duty under Customs

Act and its provision was improper. He also relied on various other Judgments to emphasize the twin points as follows:-

- 2009 (235) E.L.T. 116 (T) CCE v. Sanjari Twisters, which has been maintained by the Hon'ble Supreme Court in 2010 (255) E.L.T. A15 (S.C.).
- 2010 (259) E.L.T. 408 (Tri. - Ahmd.) - DUPONT SYNTHETICS PVT. LTD. Vs CCE, 2015 (323) E.L.T. 155 (Tri. - Ahmd.) - CCE, Surat vs CHIRAG PRINTS, which is also maintained by the Hon'ble Supreme Court in 2015 (323) E.L.T. A30 (S.C.)
- 2019 (369) E.L.T. 1003 (Tri. - Ahmd.) - Abubakar Ismail Kapadia vs CCE&ST, Surat-I
- 2022 (381) E.L.T. 407 (Tri. - Ahmd.) - Kaybee Tex Spin Ltd vs CC, AHMEDABAD

2.1 The learned Counsel also pleaded that invocation of extended period as well as levy of penalty was improper, in the factual matrix of the matter.

3. As against this, the Learned AR justified findings in Order-In-Original and drew our attention to para 3.10 in 3.11 of the impugned order stating that w.e.f 10.05.2008 amendment was brought in to require payment of Anti Dumping Duty even on the DTA clearance on the raw-material contained in the manufacture goods supply to DTA. He also stated the case law quoted by the appellants were prior to that date and therefore not applicable after coming into force of the statutory provision.

4. We find force in the argument advanced by the learned AR that in view of specific amendment brought in 2008 in the statutory provisions, Anti Dumping Duty was clearly chargeable even if the impugned raw-material was contained in the finished goods cleared in DTA. We, therefore, are of the

view, that notwithstanding the decisions of the prior period, the Anti Dumping Duty was required to be paid by the appellant. We, further find though the show cause notice has not demanded duty under the provision of Central Excise Act particularly under section 3 and Notification No. 23/2003-CE dated 31.03.2003, but has still demanded the same as per calculations of aggregate Customs Duty which are the borrowed machinery provisions under section 3 of Central Excise Act, 1944. We find that the lapse on the part of the department is not such which has denied any natural justice to the appellant. As they were aware of the nature of duty sought to be charged being under Section 3 of Central Excise Act, 1944 as is clear from their submissions made before the adjudicating authority, same therefore on merits is sustainable. However, on the point of limitation, we find that appellants had reflected all their transactions in their books of account only. Same could be detected on the basis of record by the visiting audit party. We also find the rejection of the plea relating to earlier periodic audits of the appellants by the adjudicating authority is not sustainable. Simply stating that audit does not check thoroughly but only on selected basis is nothing but exercise of undermining the purpose of departmental audit.. It also does not bring on record as to what records were checked/not checked by the audit, while giving such findings. We also find that department while demanding duty was not sure of the provision of law under which the same had to be demanded and even the penalty has been imposed under Section 112 of Customs Act, 1962, whereas the duty should have been demanded under Central Excise Act and penalty imposed under Central Excise Act/ Rules only.

5. We therefore, in view of the above factual details of the matter, hold that the demand can be sustained only for the normal period of limitation

and that penalty under section 112 of Customs Act, 1962 does not sustain.
Appeal is accordingly partly allowed.

(pronounced in the open Court on 06.06.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI