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

O-20, Meghani Nagar, New Mental Hospital Compound Ahmedabad – 380 016
Tel. : 079-22683202 Fax No. 079-22683276

(17) 159

File No. C/406-407, 425-427, 430-435, 463-470/08, E/1374-1376, 1387, 1390-1393, 1405-1411, 1414-1415/08 Date 22-1-09

From : THE ASSISTANT REGISTRAR, CESTAT, AHMEDABAD

To. (1) Alpesh Gandhi. (2) Manoj Gandhi
(3) M/s Gandhi Fibres.
203, 2nd Floor, B wing.
Karam Sandesh, Hingwala Lane,
Near Popular Hotel,
Ghatkopar (E), Mumbai-(400077)

04 FEB 2009

In the matter of : M/s Gandhi Fibres & others Appellant

V/S

C.C.Ex., Daman Respondent

I am directed to transmit herewith a certified copy of Order No. A/154-207/WZB/AHD/09, S/116-169/WZB/AHD/09 dated 17-12-08 Passed by the Tribunal under Section 35(1) of the Central Excise Act, 1944, Section 129 (B) of the Customs Act, 1962 and Finance Act, 1944.

Assistant Registrar

Copy to :-

1. Respondent
C.C.Ex., Daman

2. Advocate /Consultant
R. C. Harishankar

3. Chief Commissioner, C.Excise/Customs: Ahmedabad / Vadodara
4. ~~Comm. C.Ex. / Customs (Appeals)~~
5. Jt. C.D.R. CESTAT, Ahmedabad
6. Central Library, CESTAT, New Delhi
7. CESTAT Bar Association, New Delhi
8. CESTAT Bar Association, Ahmedabad
9. Master File
10. M/s.Commercial Laws of India Pvt Ltd
11. Centax Publication (P) Ltd
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13. M/s.Taxmann Allied Service Pvt Ltd
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15. M/s.Excise & Customs cases
16. Tax India Online Ltd.
17. Easy Service Tax Online Dot Com P. Ltd.

Assistant Registrar

(4) M/s Gomti Synthetics P Ltd
Plot No. 810/39
GIDC,
Sachin
Surat

(5) Sh. Anil Tulsian
Bngl No. 30,
Sangam Society,
G.D. Road,
Surat

(6) Yogesh M. Rohira. Adv.
B-602, Saidham Infinity,
Nr. Anand Ashram,
16th Road, Khar West,
Mumbai - 52

(7) Swagat Synthetics,
C-1/B. 568. GIDC,
Pandesara,
Surat.

(8) Mani K. Jain. - (P)
C/o. Swagat Synthetics.

(9) Manoj Goel,
22 Nand Niwas,
Adarsh Society,
Athwalines,
Surat

(10) Shri. Puneet Rangta.
Jeevan Deep Bldg,
Ring Road,
Surat.

(11) Sh. S.S. Mani Prakash.
201, Everest Mamoni,
Nandpalkar Road.
Ville parle(E),
Mumbai-57

(20) Chotubhai R. Patil.
85 Chikuwadi Row House,
Velthana,
Surat.

(21). Bajrang Yarns P. Ltd.
206 Nangaon,
Ta- Malegaon,
Nasik,

(22) G.N. Rubbertech P. Ltd.
Bamanmura, Bady,
Barasat,
West Bengal.

(23) Spectrum Silk Mills,
Plot No - 810/3,
GIDC, Sachin,
Surat.

(24) Amrit Dyg. & Ptg Pvt. Ltd.
Plot No. 5538, Road No- 55,
GIDC, Sachin,
Surat.

(25) Akhilesh Maheshwari,
D. III, Green Avenue Apt,
G.D. Road,
Surat.

(26) Manoj Goel.
2nd Flr, Vishwa karma Chamber,
Majura Gate, Ring Road,
Surat.

PTO

(12) Kamdhenu Exim P. Ltd.
Plot No- 241,
GIDC, Sachin,
Surat.

(13) Shri Yadvendra R. Singh.
C/o. Puneet Rungta,
906, Kanchanjanga Apt,
Bhatar Road,
Surat.

(14) Shri. Shivsagar Yadav.
11, Maheshwari Society,
Piplod,
Surat.

(15) Durga Poly Yarn Pvt. Ltd.
C-1470, Kohinoor Textile Mkts,
R. Road,
Surat.

(16) Sunrise Textiles
Survey No-92A,
Plot No- 1-5, Jafarnagar,
Malegaon.

(17) Altaf Bhagad.
1005 Shilpkunj Apts,
Adajan Patia, Ramdev,
Surat.

(18) Om Sai Textiles
9, 10, Ganeshkrupa Indl. Society,
Bhestan, Surat.

19) Shri Manish Sharma.
Jeevan Deep Bldg,
Ring Road
Surat.

(27) Neeraj Exim P. Ltd.
Kalyani Dist,
Nadia,
West Bengal.

(28) Veenu Tex Dyg. & Ptg. P. Ltd.
Plot No- 82011,
Road No- 82,
GIDC, Sachin,
Surat.

(29) Shri. Nandkishore Tibriwala,
25, Alipore Avenue,
Alipore, Kolkata.

(30) Vijay laxmi Transport
C/o. Satya Narayan Ashopa,
127, G.T. Road, (South)
Howrah, Kolkata.

(31) Satya Narayan Ashopa.
127, G.T Road, (South)
Howrah, Kolkata.

(32) Willingdon & Associates. Adv
201, 202, Alkapuri Arcade,
"B" Wing, Opp Welcome Hotel,
R.C. Dutt Road,
Vadodara.

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

Appeal No.C/406-407, 425-427, 430-435, 463-470/2008; E/1374-1376, 1387, 1390-1393, 1405-1411, 1414-1415/2008
(Application Nos.C/S/1451-1452, 1491-1492, 1499-1501, 1503-1504, 1555-1560, 1566-1567/2008; E/S/1494-1496, 1513, 1516--1519, 1548-1554, 1564-1565/2008)

Arising out of OIO No.9/MP/Daman/2008, dt.29.4.2008

Passed by: Commissioner of Central Excise & Customs, Vapi

For approval and signature:
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B.S.V. Murthy, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Departmental authorities?	Yes

Appellant/s ...
M/s Gandhi Fibres, M/s Swagat Synthetics, M/s Gomti Synthetics P. Ltd., M/s Anil Tulsion, M/s Kamdhenu Exis P. Ltd., M/s Durga Poly Yarn P. Ltd., M/s Sunrise Textiles, M/s Om Sai Textile, M/s Bajrang Yarns P. Ltd., M/s G.N. Rubbertech P. Ltd., Shri Akhilesh Maheshwari, Shri Manoj Goel, Shri Alpesh Gandhi, Shri Altaf Bhagad, Shri Mani Kr. Jain, Shri Yademdru R. Singh, Shiv Sagar Yadav, Shri Manish Sharma, Shri Chhotubhai E. Patil,

Represented by ... Shri C. Harishankar, Advocate.

Respondent/s ... CCE Daman

Represented by ... Ms. M.I.J. Micheal, Jt. CDR

CORAM:
MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
MR. B.S.V. MURTHY, MEMBER (TECHNICAL)

Date of Hearing : 17.12.2008
Date of Decision: 17.12.2008

ORDER No. A/154-207 /WZB/AHD/2009, S/116-169/WZB/AHD/09

Per: Mrs. Archana Wadhwa:

After dispensing with the condition of pre-deposit duty and penalties, we proceed to decide the appeal itself by a common order, as we are convinced about the violation of principles of natural justice by the Commissioner as also in view of other factors discussed subsequently by us. We are of the view that the matters need to be re-adjudicated.

2. The demand in the instant case stand confirmed against M/s Gandhi Fibres, who is a 100% EOU, along with imposition of penalty on the ground that the duty free procured goods by the said appellant stand diverted by them in the local market as against their claim of having used the same in the manufacture of final product either in their own factory or through job work. The above allegations and findings of the adjudicating authority are based upon the extensive investigations made by the Revenue and the statements of witnesses recorded during the course of such investigation. The adjudicating authority has referred to statements of high sea sellers, transporters, representatives of consignee EOU, job workers and middlemen etc to support the Revenue's case that the duty free procured material was never put to use by the said appellant, but was sold in the open market. Commissioner has also relied upon the reports obtained from check-post authorities and concerned RTOs to support the conclusion that various vehicles shown in the invoices never passed through said check-post. Further, reference also stand made to the fact that vehicle numbers mentioned in the invoices issued by the appellant, were not capable of transporting the goods in question.

3. After hearing the learned advocate Shri C. Harishankar, and learned Jt.CDR, we find from the impugned order itself that the appellant

made request for supply of some of the documents which were necessary for preparation of defence. Only interim reply (which also happens to be very detailed one), denying the allegations was filed by the appellant. Inasmuch as Revenue's allegations were based upon the statements of the various persons, the appellant also made a prayer for cross-examination of the deponents so as to test the veracity of the statements. Accordingly, in the said interim reply, appellant reserved their right to file detailed reply after completing the cross-examination.

It is seen that neither documents were supplied on the ground that they were not relied upon documents nor the cross examination was allowed by the Commissioner. The appellant has also made a specific request for allowing cross-examination of various witnesses, with reasons advanced thereby. In their letter dt.20.12.07, the appellants submitted as under:

> "It may please be appreciated that once this decision on cross-examination of witnesses is communicated to us, we would like to start cross-examining the witnesses summoned (in case our request is allowed). In case the request for cross-examination is denied for any reason, which may please be specified in your communication, we would like to file our final submission within a short period."

4. In case the Commissioner decided to reject the cross-examination, he is duty bound to convey his decision to the appellant, before deciding the matter finally so as to enable the appellant to file their detailed reply. Such denial of cross examination comes for the first time in the order itself, thus, dis-entitling the appellant to their precious right of fair and just adjudication. It is also seen that there is no inculpatory statement of Shri Alpesh Gandhi, Proprietor of M/s Gandhi Fibres or any of its employee. The entire case of the Revenue is based upon the statements of independent persons, in which case, it was necessary for the adjudicating authority to accept the appellant's request to cross examine

the deponents whose statement was being relied upon by him. The fact of cross-examination also becomes important in view of the peculiar fact discussed by us in the succeeding paragraphs.

5. It stand argued before us and shown to us that though in the impugned show case notice, the Revenue has alleged that the duty free procured material was cleared by them in the domestic market clandestinely, earlier three show cause notices were issued to the same M/s Gandhi Fibres alleging short payment of duty in respect of clearances of their final product manufactured out of the same raw material. We have been shown the show cause notices issued for the same period alleging that excess production of waste scrap, in the process of manufacture of deemed export production, has been shown by M/s Gandhi Fibres and accordingly demanding differential duty. The appellants strongly contended that such show cause notices were adjudicated by the same adjudicating authority, who passed the impugned order confirming differential duty. We agree with the learned advocate that if that be the case, the same is self-contradictory on the part of the Revenue. Different show cause notices making two altogether different allegations, which are pointing by divert to each other, cannot be made. Only one of the Revenue's stand has to be correct stand. It cannot blow hot and cold in the same breath by alleging on one hand that the raw material have not been used and stand diverted and on the other hand alleging that the final product made out of the same raw material stand cleared on lower payment of duty. Though this fact was brought to the notice of the adjudicating authority, his findings are not referring to the same.

6. Apart from the above, we also find that the appellants in their interim reply drew attention of the adjudicating authority to various positive evidences produced before him. It was specifically contended

that the returns stand filed before the Range officer showing utilization of inputs in the manufacture of deemed export product; D-3 certificates showing physical verifications by C.E. officers as regards receipt of inputs in the appellant's factory were filed, certificate were issued by C.E. officers, re-ware housing certificate by the consignee's jurisdictional officers, were also issued showing receipt from job workers and delivery of the same after the job work. The appellants also placed before the Commissioner the statements of some of the job workers, showing receipt of the raw material as also to the Panchnama showing seizure of the said raw material by DRI from the premises of some of the job workers. The other evidences like proof of actual electricity consumption, payment of job charges, oil/diesel expenses etc., agreement with the transporter, ARE-3s showing receipt by the consignee etc. were produced. It is also seen that the appellant produced an agreement between the transporters and the them to show the contradiction between the statement of the representative of such transporters, which fact supports the appellant's claim of cross examination.

7. We, at this stage, further note that various show cause notices were issued to the job workers, EOUs alleging diversion of raw material received by them from M/s Gandhi Fibres. Some of such show cause notices also stand adjudicated by the officers, as per applicant. If that be so, we really fail to understand as to how Revenue can allege diversion of the raw material from their factory without sending the same to the job workers. It is again very self-contradictory situation wherein on one hand Revenue is alleging that the consignee EOU actually received the raw material from M/s Gandhi Fibres and diverted the same in the local market and on the other hand it is being alleged in the present case that M/s Gandhi Fibres diverted the material instead of sending the same to EOUs. We find that

the re-ware housing certificates stand issued by the authorities, thus, prima facie, establishing that the goods were received by the consignee.

8. Similarly, learned advocate has drawn our attention to the various positive evidences on record indicating receipt of the goods by consignee EOU which do not stand adverted to adjudicating authority. At this stage, we do not intend to go through each and every such evidence, but record that the appellants have not been given a fair opportunity to defend themselves. Appellant's reliance upon decision of M/s Metal Gems is also well-wounded. We, thus, agree with the learned advocate that the impugned order needs to be set aside and remand to the Commissioner for de-novo adjudication, after taking into account the overall evidences available on record. If the statements of various persons are relied upon by the adjudicating authority, needless to say that appellants would be given an opportunity to test the veracity of the same through tool of cross-examination, especially when the appellants have been, prima facie, shown that the statements of some of the persons are not true reflection of the fact, when viewed against the documentary evidence available on record.

10. With the above observations, we set aside the impugned order and remand the matter to the Commissioner for fresh decision. The appellants would be given opportunity to put forth their case. However, we make it clear that we are not expressing any opinion on the merits of the case.

11. All the stay petitions and appeals are disposed off in above manner.

(Pronounced in Court)

Sd/-

[redacted]

(B.S.V. Murthy)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

cbb

23 JAN 2009

Customs, Excise & Service Tax Appellate Tribunal