

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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 11630 of 2013-DB

[Arising out of Order-in-Original/Appeal No 85-DEM-2012 dated 29.03.2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Om Sai Textiles

A-3, Ratandeeep Society, Nr. Althan Tenament, Bhatar
Road, SURAT, GUJARAT

.... Appellant

VERSUS

Commissioner of Central Excise & ST, Surat-i

New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

.... Respondent

WITH

EXCISE Appeal No. 11640 of 2013-DB

[Arising out of Order-in-Original/Appeal No 85-DEM-2012 dated 29.03.2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Om Sai Textiles

A-3, Ratandeeep Society, Nr. Althan Tenament, Bhatar
Road, SURAT, GUJARAT

.... Appellant

VERSUS

Commissioner of Central Excise & ST, Surat-i

New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

.... Respondent

APPEARANCE :

Shri Hardik Modh, Advocate for the Appellant

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

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 18.04.2023

DATE OF DECISION: 11.08.2023

FINAL ORDER NO. 11683-11684/2023

RAMESH NAIR :

The present Appeals No. E/11640/2013 and C/11630/2013 have been filed against Order-in-Original No. 85/Dem/2012 dated 29.03.2023 passed by the Commissioner, Central Excise, Customs Service Tax, Surat-I. The Appeal No. E/11640/2013 is against duty demand and penalty imposed upon

Appellant whereas the Customs Appeal No. C/11630/2013 is against the confiscation of goods and imposition of fine.

2. The brief facts of the case are that the appellant is a 100% EOU engaged in manufacture of Polyester grey fabrics falling under Chapter 54 of Schedule to the Central Excise Tariff Act, 1985. A detailed show cause notice dated. 13.02.2008 was issued to the Appellant, Arvind D. Patil, Proprietor and M/s Neeraj Exim Pvt. Ltd., Kolkata alleging that Appellant had in the guise of making deemed exports to another EOU M/s Neeraj had diverted the goods and created fictitious clearance documents to M/s Neeraj whereas the goods were not physically transported to the EOU at West Bengal but instead diverted to the local market in contravention of Exim Policy and had evaded payment of duty. The impugned show cause notice alleged that the dispatches to M/s Neeraj were mere paper transactions. Accordingly show cause notice proposed the demand of central excise duty of Rs. 2,55,38,210/- on clandestinely cleared dyed grey fabrics illicitly removed and excise duty amounting to Rs. 1,40,70,617/- on Partially Oriented Yarn valued at Rs. 1,98,70,450/- which was procured duty free under exemption notification No. 1/95-CE dated 04.01.1995 along with interest and penalty. Confiscation of goods valued at Rs. 2,89,72,080/- was also proposed under Rule 25 of the Central Excise Rules, 2002 and under Section 111(j) and 111(o) of the Customs Act, 1962. The demands made in the show cause notice were confirmed by the adjudicating authority. Being aggrieved, the appellant has filed the present appeals.

3. Learned Counsel Shri Hardik Modh appearing for the appellant submits that the finding of the lower authorities is not correct. The circular issued by Central Board of Excise & Custom dated 26.06.2001 wherein it provides that if the re-warehousing certificate is not received, liability of duty can be fastened upon the Consignor. The action of department not following the circular issued by the board is considered a violation of principle of judicial discipline.

4. He also submits that it is not the case of the department that the procedures and conditions as provided under Notification No. 1/95-CE dated 04.01.1995, Chapter 10 of supplementary instruction issued by the CBEC and Rule 20 of the Central Excise Rules, 2002 were not followed by the

appellant. The Appellant complied with all the conditions of the Rules and Regulations and therefore demand is not sustainable. As per terms of the contract, the appellant have cleared goods to M/s Neeraj Exim against Form CT-3 at ex-factory and received payment towards it. Since it is not in dispute about genuineness of CT-3 form, warehousing certificate and payment, the duty demand is not sustainable against the appellant. He placed reliance on the following judgments.

- (i) Commissioner of Central Excise Vs. Reliance Industries Ltd. – 2012 (277) ELT 398 (T)
- (ii) Sunshine Overseas Vs. Commissioner of Customs – 2011(268)ELT 374 (T)
- (iii) Abubakar Ismail Kapadia Vs. Commissioner of Central Excise & Service tax- 2019(369)ELT 1003.
- (iv) Arya Fibers Vs. C.C.Ex. -2014(311)ELT 529 (T)
- (v) Vikram Enterprises Vs. CC -2008 (226)ELT 437 (T)
- (vi) Santogen Textiles Mills Ltd. Vs. Commissioner of Central Excise – 2007(214) ELT 386 (T)
- (vii) TCP Ltd. Vs. C.C.Ex. – 2010(261)ELT 485 (T)
- (viii) Skyron Overseas Vs. Commissioner of Central Excise – 2010(252)ELT 293 (T)

5. He further submits that the investigating authority had not adduced any single evidence apart from the report of Commercial Tax Department of West Bengal to prove that goods were not received. On the contrary, the appellant produced the re-warehousing certificate duly endorsed by the Superintendent of Central Excise having jurisdictional over the factory of M/s Neeraj Exim, proof of payment and contract which proves that the goods were received by M/s Neeraj Exim.

6. He also submits that Ld. Commissioner erred in demanding duty on raw materials used in the final products. Once the duty is demanded on final products, duty cannot be demanded on the raw materials used in manufacturing of final products. He placed reliance on the following decisions.

- (i) Commissioner of Central Excise Vs. Ghodela Impex- 2013 (294)ELT 223 (T.LB)
- (ii) Commissioner of Central Excise Vs, Sanjari Twisters – 2009 (235) ELT 116 (T) – affirmed by Supreme Court – 2010 (255) ELT A15 (SC)
- (iii) Sarla Polyester Ltd. Vs. CCE – 2008(222) ELT 376 (T)

7. Shri Kalpesh P. Shah Learned Superintendent (AR) appearing for the Revenue supports the findings of the Ld. Commissioner in the impugned order.

8. Heard both the sides and perused the records. We find that the case of the department against the appellant is that Grey Fabrics sold to M/s Neeraj Exim Pvt. Ltd. were diverted into Domestic Tariff Area (DTA) in guise of clearance to the said EOU unit of West Bengal and failed to get the goods re-warehoused at the said EOU. The Ld. Commissioner by relying the report of Commercial Tax Department, West Bengal confirmed the demand. The Ld. Commissioner in the present matter also observed that the owner/ operators of 3 vehicle categorically denied transporting any goods to M/s Neeraj. The appellant has contended that as per the contract goods are cleared ex-factory delivery. The responsibility of transportation of goods from factory is upon the M/s Neeraj Exim. The contract produced by the appellant clearly shown the delivery term as Ex-factory. We also find that the appellant has contended that they had followed the procedure as laid down in law for clearances of goods to M/s Neeraj Exim and department has not disputed on the genuineness of CT-3 certificate issued by the department and re-warehousing certificate issued by the Jurisdictional officer of M/s Neeraj Exim. We find that this aspect has not been considered by the Ld. Commissioner in the present matter. Since the department has made the allegation of non-re-warehousing of the goods at the consignee's end, it has to prove the same by substantial evidence and it cannot be made on assumption. It has to be shown as if the goods were not warehoused then where were the same diverted. In present case there is no evidence of diversion of goods. We find that Appellant in the present matter produced the re-warehousing certificates duly signed by the Range Superintendent of Kalyani Range (Jurisdictional officer of M/s Neeraj Exim) before the Ld. Commissioner, however he has not given any finding on the said certificate

that whether the said certificate are false or manipulated. He has not verified the correctness of said certificates.

9. We also find that on the one hand the Revenue has made demand of central excise duty on goods consumed in the finished goods and on the other hand it is demanding duty on the finished goods which is wrong. Even if there is any duty demand, the same shall be restricted only upon finished goods. The raw material duty cannot be demanded as the same were consumed for intended purpose of manufacture. This aspect also not properly considered by the learned Commissioner.

10. We also observed that the appellant have relied upon various judgments on the identical issue which Adjudicating Authority had no occasion to consider. Needless to say that the judgments relied upon by the appellant shall apply only after verifying the facts of each case.

11. In this position, we are of the view that since the above issues have not been dealt with in a proper manner by the Ld. Commissioner, the matter needs to be reconsidered as a whole. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority to decide the matter afresh after affording an opportunity of personal hearing to the appellant preferably within a period of 2 months of this order. Appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on _____)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)