Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10226 of 2014 - DB

(Arising out of OIO-SUR-EXCUS-001-COM-010-13-14 dated 27/09/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-I)

Harish Dyeing & Printing Works ....**Appellant**
C/o, Shri Indravadan I. Chauhan, 2/1432-b, 1st Floor,
Ambica Niwas, Sagrampura, Hanuman Sheri,
Surat, Gujarat

VERSUS

C.C.E. & S.T.-Surat-I ......**Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

APPEARANCE:
Shri H D Dave, Advocate for the Appellant
Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

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

Final Order No. 12598/2023

DATE OF HEARING: 13.07.2023
DATE OF DECISION: 09.11.2023

RAMESH NAIR

In this appeal the appellant has challenged the custom duty/ Excise duty demand on the raw material used and contained in the excess shrinkage and waste generated in the manufacture of excisable goods in the appellant's EOU.

2. Shri H.D.Dave, learned counsel appearing on behalf of the appellant submits that this issue is no longer res-integra as it has been decided by this Tribunal and various courts that once the raw material procured duty free by an EOU is used in the manufacture of finished goods then on such raw material forgone duty cannot be demanded. He placed reliance on the following judgments:

- 2009 (235) ELT 116 (T)- CCE Vs. Sanjari Twisters
- 2020 (255) ELT A15 (SC)- CCE Vs. Sanjari Twisters
- 2007 (220) ELT 289 (T) Vandevi Texturisers Pvt. Ltd. Vs. CCE

3. Shri Rajesh Nathan Learned Authorised Representative appearing for the revenue reiterates the findings in the impugned order.

4. After consideration of submission made by both the sides and perusal of record, we find that the impugned order was passed ex-parte. In this regard the Adjudicating Authority made the following observation:

> *REPLY TO THE NOTICE AND PERSONAL HEARING:*
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> "5. Personal Hearings were fixed on 20.05.2013, 10.06.2013, 10.07.2013, 24.07.2013 and 19.09.2013, however, none of the noticees have come for hearing. The letters sent to them have been returned by the postal department. Earlier also the notices sent for hearing were returned by the postal department with the remarks "this company is closed returned to sender/ left". They have neither replied to the SCN and none have sought any adjournment. I therefore find that they are not interested in coming forward for making their submissions. I therefore do take up the matter for adjudication.
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> 6. Since the noticees have been given ample opportunity to come for hearings which they failed to avail, I observe that principles of natural 6. justice have been complied with.
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> Hon'ble High Court Delhi in Saketh India Ltd Vs UOI 2002(143) ELT 274(Del) has held that when proper opportunity is given to appellant to reply to Show Cause Notice and to make oral submissions but opportunity is not availed by appellant principles of natural justice are complied and adjudicating authority can pass ex parte order.

From the above observation made by the Adjudicating authority in the impugned order, it is clear that the appellant have neither availed the hearing given on various dates nor even filed the reply. It was also noted that the company was closed and all the hearing notices were returned. Now we find that since the appellant are before us by filing the appeals and also effectively made present on the date of hearing and argued their case, through their Advocates the appellant are very much in contact. Accordingly, we are of the view that one opportunity can be given to the appellant to present their case before the Adjudicating authority.

5. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order after allowing the

personal hearing and for filing reply/ submission to the appellant. The appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 09.11.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha