

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10709 of 2020 – DB

[E/Cross/10329/2020]

(Arising out of OIO-SUR-EXCUS-000-COM-004-20-21 dated 05/08/2020 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

COMMISSIONER OF C.E. & S.T.-SURAT-I

.....Appellant

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

VERSUS

SHABNAM PETROFILS PVT LTD

.....Respondent

Block No. 258, Village Karmala,
Taluka Olpad
Surat, Gujarat

With

Excise Appeal No. 10758 of 2020 – DB

(Arising out of OIO-SUR-EXCUS-000-COM-004-20-21 dated 05/08/2020 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

SHABNAM PETROFILS PVT LTD

.....Appellant

412, Jolly Plaza, Opp. Athwagate Police Chowkey,
Surat, Gujarat

VERSUS

COMMISSIONER OF C.E. & S.T.-SURAT-I

.....Respondent

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

And

Excise Appeal No. 10774 of 2020 - DB

(Arising out of OIO-SUR-EXCUS-000-COM-004-20-21 dated 05/08/2020 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

SHRI RAFIQ IBRAHIM MEMON

.....Appellant

Shabnam Petrofils Pvt Ltd., 412, Jolly Plaza,
Opp. Athwagate Police Chowkey,
Surat, Gujarat

VERSUS

COMMISSIONER OF 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-Assessee

Shri Mihir G Rayka, Addl. Commissioner for the Respondent -Revenue

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

Final Order No. 12362-12364/2024

DATE OF HEARING: 10.09.2024

DATE OF DECISION: 15.10.2024

RAMESH NAIR

These appeals are filed by assessee-appellant as well as revenue. Since appeals are arising out of a common order, all are being taken up together for disposal. Revenue has challenged the impugned order on the ground that the decision of the Ld. Adjudicating authority in extending the benefit of price-cum-duty is legally not correct.

1.1 Briefly stated, the facts of the case are that the assessee-appellant is *inter alia*, engaged in the manufacture of Polyester Partially Oriented Yarn (POY), Texturised Yarn, Draw Texturised Yarn, Grey Fabrics and Knitted Fabrics. The investigation conducted in subject matter revealed that during the period from 06.03.2014 to 22.03.2015, the assessee had manufactured and cleared the Texturised Yarn and Knitted Fabrics without payment of the Central Excise Duty leviable thereon. Further it was seen that appellant has been manufacturing texturised yarn leading to the production of grey and knitted fabrics on different floors of the same registered premises under one roof. During the course of investigation it was found that the appellant had on 21.02.2014 intimated the Jurisdictional officers to revise the declared ground plan of the factory building. Appellant claimed the exemption under Notification No. 30/2004-CE dated 09.07.2004 on clearances of texturised yarn and knitted fabrics. As per revenue the said notification is conditional and the exemption from payment of duty is applicable only when yarn is procured from outside. The assessee's contention is that they are exempted from payment of duty under Notification No.30/2004-CE dated 09.07.2004 on the clearances of texturised yarn and knitted fabrics manufactured out of POY, which was not procured from outside, does not fall under the ambit of the said notification. On conclusion of the investigation a Show cause notice dated 28.03.2019 was issued to the assessee-appellant proposing recovery of central excise duty along with interest and penalty. The show cause notice was adjudicated by the Ld. Commissioner vide impugned order-in-original

dated 05.08.2020 by which the duty demand was confirmed and held that the appellant are not eligible for exemption from payment of duty under Notification No. 30/2004-CE. However he allowed the benefit of cum-duty prices. Hence, the present appeals have been filed.

2. Shri H.D. Dave the learned Advocate, appeared on behalf of the assessee-appellant submits that condition No. 6 as suggested to be fulfilled of Notification No. 34/2004-CE as amended from time to time, applies only and only to clearances of texturized yarn falling under Ch 54 and does not apply to clearances of knitted fabrics falling under Ch 60. Therefore firstly to apply this condition to all clearances is entirely wrong and incorrect.

2.1 He also submits that admittedly the appellant had notified the department under their application dated 21.02.2014, with detailed ground plan that hence forth they are bifurcating their single factory in to 3 different factories in separate buildings, by carrying out additional construction in their premises. Accordingly even before commencing their said clearances for the period from 06.03.2014, they had duly intimated that they will now make POY in a separate factory building in unit 1 and said POY was thereafter sold and given to Unit 2 for making texturized yarn and Unit 3 making knitted fabrics, which both units 2 and 3 never availed its Cenvat Credit thus fulfilling the conditions of the Notification entirely. In fact even after dis-continuing such clearances claiming exemption of this Notification, the Appellant had again intimated the department vide letter dtd. 23.03.2015 that henceforth they will not claim this exemption. Therefore not only the condition No. 6 of the Notification was fulfilled in this period when the appellant claimed exemption but even before the issuance of SCN, the entire activity was duly informed to the department. Accordingly even the extended period could not have been invoked by issuing this SCN in 2019.

2.2 He further submits that the Panchnama dated 18.03.2015 and the statement of the Director of the Appellant dated 07.01.2016 as drawn during the investigation, clearly records that there are 3 separate buildings in the premises, which are undertaking separate manufacturing activities entirely. However in direct contradiction of this panchnama and statement of investigation the SCN wrongly recorded that the 3 units are located at

one place only. Even the specific letter dtd. 26.11.2019 as written by the department, on a specific query of the Assistant Commissioner, clearly noted that all 3 units are separately located and unit 2 & 3, which are manufacturing and clearing Texturized yarn and knitted fabrics, do not have any facility to make POY at all nor have they claimed any credit of the duty paid on such POY used by them.

2.3 He also submits that this issue is also squarely covered by the Judgment and decision of tribunal in the case of Bhilosa Industries Pvt. Ltd. Vs. CCE, Surat reported in 2105(317)283 (Tri,- Ahmd).

2.4 He argued that even otherwise the unit No.2 clearing texturized yarn falling under Ch.54 is clearly entitled to this exemption, since it procured duty paid POY from outside without availing any Cenvat Credit upon the same. Since once the duty was paid by separate Unit 1 on the POY, the issue ended there. The exemption claimed by unit 2 on the duty paid POY procured by them from Unit 1, without availing cenvat credit being a separate manufacturing activity at a separate place entirely, it was clearly entitled to this exemption under Notification No. 30/2004-CE. Accordingly condition No. 6 of the Notification stands duly fulfilled by Unit 2 making texturized yarn.

2.5 He further submits that said condition No. 6, admittedly does not apply to clearances of "knitted fabric and waste falling under Ch 60, as condition No. 6 is not incorporated in the Notification, nor any other such condition, for claiming its exemption.

2.6 He also submits that assuming though not admitting that Cenvat credit was availed by unit 1 on inputs in making POY, admittedly once when the same was cleared on payment of duty to Units 2 and 3, which both never availed any Cenvat credit on the same, therefore fulfils the condition of the Notification equally, about not availing any Cenvat credit in claiming this exemption. It is also settled law that even reversal /payment of any Cenvat credit prior to, or even after clearances, claiming any exemption under any notification etc, amounts to not availing such Cenvat credit at all. In appellant's case admittedly firstly no Cenvat credit was availed at all by units 2 & 3. And even assuming that POY was made by Unit 1 by

claiming Cenvat Credit on inputs the same was duly reversed by again paying duty on clearing this POY. He placed reliance on the following judgments:-

- CCE Mumbai Vs. Bombay Dying Y Mfg. Co. Ltd. -2007(215)ELT 3(SC)
- Global Wool Alliance Pvt. Ltd. Vs. CCE, Thane -2017(358)ELT 1218 (Tri. Mumbai)
- CCE Vs. Ashima Dyecoat Ltd. – 2008(232)ELT 580 (Guj)
- Hello Minerals Water Pvt. Ltd. Vs. Union of India 2004(174)ELT 422 (All)
- Omkar Textiles Mills Pvt. Ltd. Vs. CCE Ahmd- 2014(311)ELT 587(Tri. Ahmd).
- Finolex Industries Ltd. Vs. CCE- 2017(352)ELT 79 (Tri. Ahmd.)

2.7 He also argued that larger period of limitation beyond 1 year, could not have been invoked for determining any duty on clearances made from 06.03.2014 to 22.03.2015 by issuing the impugned show cause notice on 23.03.2019, when the appellant unit 1 was filing regular ER-1 returns about clearance of its entire POY under duty paid invoices to Unit 2 & 3. Equally the application made by the appellant dtd. 21.02.2004, both physically and online, in seeking to amend the registration certificate were duly filed by the Appellant prior to claiming exemption already. Further, this is not case of any suppression or clandestine removal, since the appellant was under the bona fide belief of being eligible to this exemption, having fulfilled all the conditions of Notification No. 30/2004-CE after duly intimating the department about its activities entirely.

2.8 Without prejudice, he also submits that assuming though not admitting that the appellant is to be denied this exemption, even then admittedly the amount of Rs. 8,08,91,469/- which is paid by Unit 1 of the 3 units, even if is considered as one factory as per the revenue, would be available as Cenvat credit. The SCN itself is issued to treat all units as one and denies exemption saying all units in one compound and different buildings is one factory, which means that duty paid upon POY stage, has to be therefore considered as duty payment in the same case, for purpose of the SVLDRS also, which the appellant duly applied for vide declaration dated 10.11.2019 but was rejected vide order dated 15.12.2019.

Admittedly as canvassed under the SCN if the department's case is correct and Appellant is not entitled to exemption of 30/2004, then duty payable is Rs. 10,25,14,149/- of which they have already paid Rs. 8,08,91,469/- as clearly verified and certified by the department itself. Accordingly the benefit of the SVLDR Scheme was therefore also clearly available to the Appellant. The Writ Petition being SCA 11637/2020 filed by the appellant before the Gujarat High Court is also pending in this regards.

3. Shri Mihir G Rayka, Ld. Additional Commissioner (AR) appearing on behalf of the Revenue as regard the appellant's appeals reiterates the finding of the Ld. Commissioner and submits that Ld. Commissioner correctly concluded that the assessee had not satisfied the condition of exemption Notification No. 30/2004-CE dated 09.07.2004 and hence not eligible for exemption on the clearance of the texturized yarn and knitted fabrics.

3.1 As regard the revenue appeals he submits that the decision of the adjudicating authority in extending the benefit of price cum -duty, and resultantly not confirming the Central Excise Duty demand of Rs. 1,13,51,196/- is not in line with the decisions of the Hon'ble Apex court in the case of Amrit Agro Industries Ltd. Vs. CCE, Ghaziabad -2007(210)ELT 183(SC). The Ld. Commissioner appears to have erred in not confirming the demand of Central Excise Duty to the tune of Rs. 1,13,51,196/- by allowing the benefit of cum-duty price to the assessee, with consequential demand of interest and imposition of penalty thereon.

4. Heard both sides and perused the case records as well as the written submissions made by both the sides.

4.1 We find that the main issue for consideration in this case is about eligibility to the exemption claimed by the Appellant in Clearing Texturized Yarn under chapter 54 of CETA and Knitted Fabrics under chapter 60 of the CETA at "nil rate of duty" claiming exemption under Notification No. 30/2004-CE dated 09.07.2004 as amended from time to time. For better appreciation of this issue, the extract of relevant Sr. No. of the table annexed to Notification No. 30/2004-C.E., dated 9-7-2004 is reproduced below :-

"Textiles and Textile Articles — Effective rate of duty to specified goods of Chapters 50 to 63

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 7/2003-Central Excise dated the 1st March 2003, published in the Gazette of India vide number G.S.R. 137(E), dated 1st March 2003, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), specified in the corresponding entry in column (2) of the said Table, from whole of the duty of excise leviable thereon under the said Central Excise Act :

Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs or capital goods has been taken under the provisions of the CENVAT Credit Rules, 2002, -"

S. No.	Chapter or Heading No. or Sub-Heading No.	Description of Goods
6.	54.02, 54.03	Yarns procured from outside and subjected to any process other than texturising, by a manufacturer who does not have the facilities in his factory (including plant and equipment) for manufacture of yarns or textured yarn (including draw twisted and draw wound yarn) of Heading 54.02 or 54.03. <i>Explanation, - For the purposes of this explanation, "manufacture of yarns" means manufacture of filaments of organic polymers produced by processes, either :</i> <i>(a) by polymerization of organic monomers, such as polyamides, polyesters, polyurethanes, or polyvinyl derivatives; or</i> <i>(b) by chemical transformation of natural</i>

		organic polymers (for example cellulose, casein, proteins or algae), such as viscose rayon, cellulose acetate, cupro or alginates.
18	60	All goods

From a perusal of the above entry under the ‘description of the goods’ of Notification No. 30/2004-C.E., it is observed that the exemption was first available to a manufacturer for carrying out the processes (other than texturising) on yarn procured from outside who, does not have the facility in ‘his factory’ for the manufacture of yarn or texturised yarn of Heading 54.02 or 54.03. This entry was further amended by Notification No. 10/2005, dated 1-3-2005 and the amended description of the goods eligible for exemption read as under :-

S. No.	Chapter or Heading No. or Sub-Heading No.	Description of Goods
6.	54	<i>All filament yarns procured from outside and subjected to any process by a manufacturer who does not have the facilities in his factory (including plant and equipment) for manufacture of filament yarns of Chapter 54. Explanation, - For the purposes of this explanation, "manufacture of yarns" means manufacture of filaments of organic polymers produced by - (a) by polymerization of organic monomers, such as polyamides, polyesters, polyurethanes, or polyvinyl derivatives; or (b) by chemical transformation of natural organic polymers (cellulose, casein, proteins or algae), such as viscose rayon, cellulose acetate, cupro or alginates.</i>

4.2 Thus Notification No. 30/2004-CE dated 09.07.2004 as amended vide Notification No. 10/2005 dated 01.03.2005 exempts all filament yarn procured from outside and subjected to any process by a manufacturer who

does not have the facilities in his factory (including plant and equipment) for manufacture of filament yarns of chapter 54, from payment of whole of Central Excise Duty. Further, benefit of Notification is available to goods of Chapter 54 and 60 of Central Excise Tariff if credit of duty on inputs or capital goods has not been taken under the provisions of the Cenvat Credit Rules, 2002/2004.

4.3 We find that the Appellant claimed the exemption of above Notification on the ground that they were manufacturing POY in Building No.1 of the Factory, Textured yarn in Building No. 2 & 3 of the Factory and Knitted fabrics in Building 3 of the Factory. Appellant paid the Excise Duty amounting to Rs. 8,08,91,469/- on POY manufactured in Building No. 1 and cleared to Building No. 2 & 3 for manufacture of Textured Yarn and Fabric. In the present matter Appellant claimed the all the manufacturing areas are to be treated as separate entity and we find support in claim of the Appellant. M/s. SPPL obtained Central Excise Registration dated 14.05.2004 for manufacture of POY falling under Chapter sub-heading No. 5402 42 and texturized yarn under chapter heading No. 540232. We noticed that appellant vide their letter dated 21.02.2014 filed the application for amendment in their Central Excise Registration certificate they had submitted the new factory ground plan, in addition they had also filed online Application in Form A-1 on 21.02.2004.

4.4 We find that as regard the Notification No. 30/2004-CE as amended against Sr. 6 the expression "*Yarn procured from outside and subject to any process other than texturizing by a manufacture who does not have the facilities in his factory for manufacture of filament yarn of Chapter 54*" are used. The said expression are interpreted by the Hon'ble CESTAT in the matter of Bhilosa Industries Pvt. Ltd. Vs. Commissioner of Central Excise, Vapi -2015(317)ELT 283(Tri. Ahmd) *supra* as under :-

"9.1 Under this amendment dated 1-3-2005, all filament yarns procured from outside when subjected to any process (including texturising) by a manufacturer were exempted if the manufacturer does not have facility "in his factory" for manufacturing the filament yarn of Chapter 54. By this amendment even texturised yarn was also brought within the ambit of exemption under Sr. No. 6 of Notification No. 32/2004-C.E. In the absence of any definition of words "his factory", used in this notification, a clear

picture is not emerging whether the words "his factory" mean the same factory where exempted processes are undertaken or will also include all the factories owned by the manufacturer because the words like "in the same factory" or "his factory/factories" or "manufacturer not having the proprietary rights in any other factory" etc. have been used by legislative in other exemption notifications. Shri V. Sridharan (Sr. Advocate) in his arguments, inter alia, also relied upon Sr. No. 10 of the same exemption notification to argue that similar words 'his factory' have been used in Sr. No. 10 but no demands are raised by the Revenue with respect to processes like carding, combining etc. done by those manufacturers having facilities for producing goods of Headings 55.01, 55.02, 55.03 & 55.04.

9.2 *It is observed from the case records that following expressions have been used in the description column of Table to Notification No. 30/2004-C.E. as amended, against Sr. No. 6*

- (a) 'Yarns procured from outside'*
- (b) 'Subjected to any process by the manufacturer'*
- (c) 'Who does not have the facilities in his factory for the manufacture of filament yarns of Chapter 54'*

All the above three expressions used in Notification No. 30/2004-C.E. have been interpreted differently by the Revenue and the appellants. According to Revenue, the yarns should be purchased by the manufacturer from outside. Further, revenue is also of the view that the word 'manufacturer' used in Notification No. 30/2004-C.E. should be interpreted 'manufacturer as a 'legal entity' and that the words 'in his factory' should include all the factories of the manufacturer as a legal entity. Appellants on the other hand argued that words 'procured from outside' used in the notification means that the yarn should have been obtained (whether purchased or not) from outside and the word 'manufacture' should be the same factory/assessee to whom demand is issued. That accordingly the expression 'in his factory' should be treated as 'the same factory'.

9.3 *It is observed from the wording of Notification No. 30/2004-C.E., as amended, that the same is an exemption notification issued under Section 5A(1) of the Central Excise Act, 1944. As per this Section Central Government may exempt excisable goods of specified description with respect to certain manufacturing activities. The exemption under Sr. No. 6 of this notification is to all filament yarns of Chapter 54 of the Central Excise Tariff Act, 1985. The second requirement is that the same is subject to any process by a 'manufacturer' who does not have the facilities in his factory for the manufacture of filament yarns of Chapter 54. In this regard it is also observed that the words 'manufacture' and 'in his factory' have not*

been defined in Notification No. 30/2004-C.E. At the same time it is an undisputed fact that the activities of making filament yarn (POY) and its subsequent processing pertaining to existing demands are carried out in different factories. As the word 'manufacturer' has also not been defined specifically in exemption Notification No. 30/2004-C.E. or Central Excise Tariff Act, 1985, therefore, the meaning of the same has to be understood from Section-2(f) of the Central Excise Act, 1944 :

"SECTION 2. Definitions. - In this Act, unless there is anything repugnant in the subject or context, -

(a)

(b)

(c)

(d)

(e)

(f) "manufacture" includes any process, -

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or

(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer, and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account".

9.4 Under the Central Excise Taxation duty of Central Excise is levied on the 'act of manufacture' as defined in Section 2(f) of the Central Excise Act, 1944 and the person who carries out the 'act of manufacture' is the 'manufacturer'. A 'manufacturer' who is liable to pay duty becomes an 'assessee' by virtue of Rule 2(c) and has to take out a Registration as per the provisions of Rule 9 of the Central Excise Rules, 2002. From the above basic elements of Central Excise law a 'manufacturer' is the person who carries out the 'act of manufacture'.

9.5 In the present proceedings the 'act of manufacture' is being undertaken by the appellants factory to whom demand show cause notices are issued and each factory will make the person carrying out the activity of manufacture as the 'manufacturer'. There is nothing in the definition of Section 2(f) to indicate that a 'legal entity' only has to be considered as a

'manufacturer'. Rather each 'assessee' has to be treated as a manufacturer and not the entire group of companies as claimed by the Revenue. In the present proceedings also even the demands have been issued by the Revenue to the individual assessee carrying out the exempted processes and not to the head offices of the group companies as a legal entity. Therefore, we are of the considered view that the word 'manufacturer' used in Sr. No. 6 of the Notification No. 30/2004-C.E. has to be interpreted as a unit where the 'act of manufacture' is being undertaken which is the individual factory and not all the factories of a group of companies.

9.6 *From the above analysis when the definitions of 'manufacture', 'manufacturer' and 'factory'; as given in Section 2(f) and Section 2(e) of the Central Excise Act, 1944; are collectively read then our mind the expression 'in his factory' will mean the factory of the 'manufacturer' and that factory will mean 'the same factory' where manufacturing activity is being undertaken and the word 'manufacturer' will not mean a legal entity or all group companies taken together. If any contrary interpretation is made then demands under Section 11A of the Central Excise Act, 1944 could be raised against any of the registered units of a group of companies undertaking manufacturing activities at different locations.*

9.7 *The above view taken is also fortified by the following facts available on record. Before exemption under Notification No. 30/2004-C.E. texturised yarn (including draw twisted and draw wound yarn) of polyesters; manufactured by 'independent texturiser', who does not have the facilities 'in his factory' for producing POY; was exempted from duty in excess of Rs. 2.50 per kg under Notification No. 6/2000-C.E., dated 1-3-2000 as amended (Sr. No. 114). The words used in this notification were 'independent texturiser' and 'in his factory'. Both the words were singular and meant one person doing the act of texturising in his factory. Appellants were availing the benefit of this exemption and no objection was ever raised by Revenue that if appellants had more than one factories, having facilities of producing POY elsewhere, then exemption under Notification No. 6/2000-C.E. will not be admissible. Further the words 'independent texturiser' was not defined in Notification No. 6/2000-C.E. but the words 'independent processor' was defined as an Explanation in Sr. No. 89 of the same notification as follows :-*

"89.	51.10 Or 51.11	Fabrics woven on handlooms, namely :- (a) certified as "khadi" by the Khadi & Village Industries	Nil	-	-
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		<i>Commission; or (b) processed without the aid of power or steam; (c) processed with the aid of power by a factory owned by a registered handloom co-operative society or any organization set up or approved by Government for the purpose of development of handlooms; or</i>			
		<i>(d) processed by an independent processor approved in this behalf by the Government of India on the recommendation of the Development Commissioner for Handlooms. Explanation. - In this entry, for the purposes of the fabrics woven on handlooms, "independent processor" means a manufacturer who is engaged exclusively in the processing of fabrics with the aid of power and who has no proprietary interest in any factory engaged in the spinning of yarn of wool or weaving of woolen fabrics."</i>			

9.8 From the above expression "No proprietary interest in any factory engaged in", used in Sr. No. 89 of Notification No. 6/2000-C.E., it is

clear that legislature has the vision and skill to express as to what could be the intention of the words 'his factory'. If the intention of legislature to interpret the words 'in his factory' was also to include any other factory of the appellants, then legislature in the notifications has used the words like 'in any factory/factories' of the assessee' or 'no proprietary interest in any other factory' or 'one or more factories' etc. A view that the words "in his factory" means the same factory also gets fortified by Para 4.8.1 of DOF No. 334/3/2004-TRU, dated 8-7-2004 issued by JS(TRU), Ministry of Finance, which uses the word 'unit' which can be only the manufacturing unit or a factory and not the all inclusive 'legal entity' of a group of companies as claimed by the Revenue.

9.9 *In the light of the above observations the words 'in his factory' used in Sr. No. 6 of Notification No. 30/2004-C.E. will mean the 'same factory' and appellants will be entitled to the exemption under Notification No. 30/2004-C.E. Appeals filed by the appellants are required to be allowed, on this ground alone."*

4.6 We find that Appellant also has 3 different Units in entirely separate buildings of which 1st Unit (Building No. 1) was making POY and clearing the same on payment of duty to 2nd Unit (Building No.2) which made texturized yarn and sent the same to Unit -3 (Building No.3) making knitted fabrics from the same. We also find that in the present matter both the Units 2 and 3 have received the duty paid POY and said units never availed the Cenvat Credit on such duty paid POY. Thus it is clear that both the units i.e. Unit 2 and Unit 3 clearly fulfilling the conditions of the Notification i.e. non availment of cenvat on the inputs received from unit 1 and the condition of having not used in the same factory as held in the case of Bhilosa judgment supra. In such circumstance we do not find any merits in impugned order.

4.7 We also find that the Ld. Commissioner has erred in his finding that since the Appellant was holding one factory licence under the Factories Act, 1948 for all the products, hence it is one factory. The exemption Notification No. 30/2004-CE does not prescribes a criterion about having separate factory licences for treating two factories as separate.

4.8 Without prejudice to the above finding whereby the entire demand is not sustainable, we further find that in respect of knitted fabric falling under chapter 60 it is covered by exemption Notification No.30/2004-C.E. entry Sl. No. 15 which entry is reproduced below:-

"Exemption to specified goods of Chapter 50 to 63.- in exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944) read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 7/2003-Central Excise dated the 1st March 2003, published in the Gazette of India vide number GS.R. 137(E), dated 1st March 2003, the Central Government, being satisfied that it is necessary in the pub lie interest so to do, **hereby exempts** the excisable goods of the description specified in column (3) of the Table below and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), specified in the corresponding entry in column (2) of the said Table from **whole of the duty of excise leviable** thereon under the said Central Excise Act:

Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on [inputs] has been taken under the provisions of the Cenvat credit Rules,[2004]

S. No.	Chapter or Heading No. or Sub-Heading No.	Description of Goods
15.	60	All goods

4.9 The Knitted Fabric falls under Chapter 60 and as per above entry it does not have any other condition except that the assessee should not avail the Cenvat credit on the input. In the case of knitted fabric, even though the unit No.1 availed the Cenvat credit but the excise duty on the POY was paid and such duty paid goods was subsequently used by unit No.2 & 3 but no Cenvat credit was availed on the POY. Therefore the situation becomes as for the manufacture of knitted fabric no Cenvat credit was availed on it's input which was cleared by unit No.1 on payment of duty. Therefore even if all the units are considered as one, but not accepted, then also if in one

factory, any duty is paid on intermediate goods and Cenvat thereof is not availed for manufacture of other final product, the condition of non availment of Cenvat credit for the said final product is clearly stands complied with. Accordingly, in the present case knitted fabric is clearly exempted as no Cenvat credit was availed on its inputs in terms of notification No. 30/2004-C.E. dated 09.07.2004 (Sl.15). Therefore on this alternate finding the knitted fabric is undisputedly exempted.

4.10 In view of the above it is clear that even in the same factory if the Cenvat credit is availed on the initial input and used in the manufacture of intermediate product on which excise duty is paid and subsequently no Cenvat credit is availed on the said intermediate goods, the final product manufactured out of the said duty paid intermediate product shall be eligible for exemption carrying condition of non availment of Cenvat credit on input. This view is based on the fact that the final product manufactured is not out of cenvatted input, hence the condition of the notification clearly stands fulfilled. Therefore in the present case knitted fabric is eligible for exemption. Accordingly the duty demand on knitted fabric is not sustainable on this ground also.

4.11 We also find force in argument of appellant on limitation. In the present matter the demand for the longer period is time-bar as there is no suppression of fact. We find that show cause notice was issued on 28-03-2019 for the period of 05.03.2014 to 22.03.2015 by invoking the extended period. The issue is the eligibility of the Notification No. 30/2004-C.E. on Texturized Yarn and Knitted Fabrics by separating the factories manufacturing POY and Texturized Yarn and Knitted Fabrics. The appellant have claimed the exemption notification. Appellant vide letter dated 21.02.2014 specifically revised their ground plan before starting to avail the disputed exemption on Texturized Yarn and Knitted Fabrics by separating the factories. Similarly, before discontinuing availing of the exemption by merging the two factories, the appellant also intimated the department vide letter dated 23.03.2015. In the said letter appellant had very categorically explained in full details that till date they have treated separate premises as separate factories and paid duty of POY which was used in Texturized unit and Knitting division. It was further mentioned in

the said letter that w.e.f. 23.03.2015, the Appellant had decided to merge Texturising Division and Knitting Division with POY division and that they would clear texturized yarn and grey fabrics on payment of duty. Appellant also claimed Cenvat credit in respect of stock of POY lying in stock as on 23.03.2015 covered by 17 duty paid invoices. . Therefore, claiming the exemption notification which was in the knowledge of the Revenue, the suppression of fact or *mala fide* on the part of the appellant cannot be attributed. Further the issue involved is clearly an interpretational issue of exemption notification. Therefore, in the peculiar facts as noted above there is no suppression of fact or *mala fide* intention on part of the appellant, therefore, the invocation of extended period is illegal and incorrect. Accordingly, the demand for the longer period is not sustainable on the ground of time bar also. The demand is set aside on merit as well as on limitation.

5. As per our above discussion and finding, the impugned order is set aside. In the result, the appeals filed by the assessee-appellants are allowed with consequential relief, if any, as per law and the appeal filed by the Revenue is dismissed. CO also disposed of.

(Pronounced in the open court on 15.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)