Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Excise Appeal No.762 of 2012
(Arising out of OIA-729-744/2012/COMMR-A-/RBT/RAJ dated 21/08/2012 passed by Commissioner of Central Excise-RAJKOT)

Deepak Processors ....**Appellant**
Main Road, Navagadh, Via-Jetpur,
Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot ....**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

WITH

- **Excise Appeal No. 763 of 2012 (Jagjit Textile Dying & Print)**
- **Excise Appeal No. 764 of 2012 (R B Prints)**
- **Excise Appeal No. 821 of 2012 (Balkrishna Textile Industries)**
- **Excise Appeal No. 822 of 2012 (Rakesh Folding Works)**
- **Excise Appeal No. 823 of 2012 (Jaldarshan Textile)**
- **Excise Appeal No. 824 of 2012 (Jankeshwari Textile)**
- **Excise Appeal No. 825 of 2012 (Chandrajyot Dyeing & Printing Works)**
- **Excise Appeal No. 826 of 2012 (Amarouja Textile Printery)**
- **Excise Appeal No. 827 of 2012 (Jayshree Impex)**
- **Excise Appeal No. 828 of 2012 (Patidar Prints)**
- **Excise Appeal No. 829 of 2012 (V V Prints)**
- **Excise Appeal No. 830 of 2012 (Ambika Industries)**
- **Excise Appeal No. 831 of 2012 (Monisha Tex O Print)**
- **Excise Appeal No. 832 of 2012 (Purni Textile)**

(Arising out of OIA-729-744-2012-COMMR-A--RBT-RAJ dated 21/08/2012 passed by Commissioner of Central Excise-RAJKOT)

APPEARANCE:
Shri Paresh Sheth & Shri P D Rachchh, (Advocates) for the Appellant
Shri G. Kirupanandan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 10135-10149 /2023

DATE OF HEARING: 19.09.2022
DATE OF DECISION: 25.01.2023

RAMESH NAIR

The appellants have filed these 15 appeals against the impugned order-in-appeal dated 21-08-2012 passed by the Commissioner of Central Excise (Appeals), Rajkot whereby the Commissioner (Appeals) has denied the benefit of Deemed Credit. Since the issue involved in all these appeals is common, all the 15 appeals are disposed of by this common order.

02. Briefly the facts of the present case are that all the appellants are engaged in the manufacture of excisable goods falling under chapter 52. During the period from 01.07.2000 to 31.03.2003, appellants had procured Bleached Cotton Fabrics falling under Chapter 52.07.and processed with dyes/chemicals/ consumable and manufactured final products viz. printed cotton fabrics falling under Chapter heading No. 5207.33. The Appellants sought permission from the Deputy Commissioner, Central Excise, Division-II, Rajkot to allow them to take the Deemed Credit in the Cenvat Register for the period from 01.04.2000 to 31.03.2003 under Notification No. 28/2000-CE(NT)dated 31.03.2000, No. 07/2001-CE(NT) dated 01.03.2001, No. 53/2001-CE (NT) dated 29.06.2001 and No. 6/2002-CE (NT) dated 01.03.2002 read with Rule 11 of Cenvat Credit Rules 2002. The Deputy Commissioner vide Order No. 1/TECH/2003 dated 13.11.2003 allowed deemed credit to the appellants. However, against the said order department filed appeal before the Commissioner (Appeals), who vide Order-In-appeal dated 18.02.2005 has allowed the appeals filed by the department and set aside the Order No. 1/TECH/2003 dated 13.11.2003.

2.1 Further, subsequent to the Order No. 1/TECH/2003 dated 13.11.2003, all the appellant took the deemed credit and to safeguard the government revenue, the Commissioner, Central Excise, Rajkot issued show cause notices to all these appellants. Since the Order No. 1/TECH/2003 dated 13.11.2003 of the Deputy Commissioner was set aside, the Commissioner of Central Excise, Rajkot vide Order-In-Original dated 26.04.2005 also disallowed the deemed credit taken by the appellants. Aggrieved with the Order-In-Appeal dated 18.02.2005 and Order-In-Original dated 26.04.2005, Appellants have filed appeals before the CESTAT. The CESTAT vide Order dated 05.06.2006 and 23.08.2007 remanded the matter back to the original authority. In de-novo proceedings the Assistant Commissioner, Rajkot vide Order –In-Original dated 19.11.2011 disallowed the deemed credit to all the appellants and ordered for appropriation of the amount already reversed, and also ordered for recovery of interest under Section 11AB of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004. Being aggrieved with the order appellants filed the appeals before the Commissioner (Appeals) who ,vide impugned order –in-appeals rejected the appeals filed by the appellants and upheld the Order-In-Original dated 19.11.2011. Hence the appellants are before us.

03. Learned Counsel Shri P.D. Rachchh appearing on behalf of the appellants submits that sole issue to be decided in the instant cases is whether benefits of deemed credit under the following Notification can be extended to the Appellants in terms of Explanation 3 to the said Notifications.

- Notification No. 28/2000-CE(NT) dated 31.03.2000
- Notification No. 7/2001-CE(NT) dated 31.03.2001 as amended
- Notification No. 53/2001-CE (NT) dated 29.06.2001
- Notification No. 6/2002-CE (NT) dated 01.03.2002 as amended

It is the case of the revenue that appellants had received Cotton Printed Fabrics, therefore as per Explanation 3 to the said Notification benefit of said Notification cannot be extended to the appellants. Appellants had received Cotton Grey Fabrics and since they were having only facilities for process of printing of their factories and process of bleaching and mercerizing was must before the process of dyeing & printing and since the processor who can carry out such processes were situated surrounding to them in the vicinity of Jetpur town of Gujarat, with the mutual understanding with the merchant exporters for ease of transportation and to save cost Cotton Grey Fabrics were first sent to the premises of the processors who had carried out bleaching and mercerizing. Therefore all the appellants are entitled for benefit of deemed credit as provided under the said Notification for the period under dispute.

3.1 He also submits that on plain reading of the Explanation 3 to the said Notification as well as other provisions of the Notification, such explanation excludes those processed fabrics used as an inputs for further processing from the benefit of the Notification which were processed in the same factory of the manufacturer and not in other factory. Plain reading of the explanation gives the meaning that benefit of deemed credit cannot be availed by the processor at each stage of process as benefit of Notification No. 67/95-CE dated 16.03.1995 as stood during the period under dispute excludes the Woven Fabrics /Fabrics of Cotton classifiable under Chapter 52 or Chapter 54 or Chapter 55. It means Woven Fabrics or Fabrics of Cotton viz., Grey, Bleached, Dyed or Printed or any other inputs when used for manufacture of other goods including the said goods for manufacture of other goods out of the said four goods, if bleached fabrics is used for manufacture of printed fabrics and on benefit of exemption for captive consumption was not admissible and one has to pay duty of excise at each stage of manufacture of Woven Fabrics or Fabrics of Cotton. Therefore, though goods were not removed from the factory it has to be considered as clearance of final products viz. Grey Fabric for bleaching, Bleached fabrics for dying and Dyed Fabrics for printing and in that situation to prevent availment of deemed credit benefit at each stage of process such explanation came into picture. As per Chapter Note 3 of Chapter 52 in relation to products of heading 52.07, 52.08 and 52.09, bleaching, mercerizing, dyeing, printing, water proofing, shrink-proofing, organdie processing or any other process or any one or more of these processes shall amount to manufacture. To prevent benefit of deemed credit at such each stage of process, said explanation is inserted in the Notification so as to avoid any undue benefit by the manufacturer of final products.

3.2 Without prejudice, he also submits that it is not disputed by the revenue that such processors had carried out the process of bleaching and mercerizing without aid of power as intermediate Job Worker and therefore, same were exempted from levy of duty of excise vide Notification No. 6/2002-CE dated 01.03.2002 as amended (Sr. No. 112). Therefore, benefit of the said Notification viz. deemed credit was never availed by anyone at any stage before the appellants.

3.3 He further submits that if the said processes mentioned in Chapter Note 3 was carried out in different factory premises, such goods were liable to duty of excise and in that case for manufacture cotton belached fabric, cotton grey fabrics were inputs which was also processed fabric as notification nowhere defines the word processed fabrics, so that processor of Bleached fabric as per Explanation 3 was not entitled for benefit of said Notification. For the sake of argument it is assumed that Cotton Grey Fabrics is not processed fabric and processor of bleaching and mercerizing was entitled for benefit of deemed credit under the said Notification in that case, such processors have to pay duty of excise and receiver of such bleached & mercerized fabrics have to avail Cenvat Credit under Rule 3 of the Cenvat Credit Rules, therefore as per para 4 of the Notification such manufacturer cannot avail benefit of deemed credit under the said Notification.

3.4 He also submits that if the interpretation made by the revenue is accepted as correct that if processed fabric viz. Bleached & Mercerised Fabrics is used as an input for further processing viz. Dyeing and Printing then for carrying out any process viz., Bleaching & Mercerising if one may receive Woven Fabrics then also it has to be considered that processed fabrics itself is used as input for further processing, as weaving was also a process and from yarn of fiber woven fabrics was manufactured by process of weaving only. In that case no manufacturer may become eligible for benefit of deemed credit under the said Notification. Such interpretation is not permissible.

3.5 He argued that the Central Government while inserting explanation 3 purposefully not used the words "Process Fabrics itself further used as input for manufacture of final products" but used "for further processing" so as not to include processed fabrics manufactured by other manufacturer in other factory while not allowing benefit of the said Notification. If the intention was to prevent use of any processed fabrics for manufacture of final products for debarring benefit of the said notifications, the word further processing was not used but used for manufacture of final product. The wordings further processing is used so as to restrict the benefit of deemed credit at each stage of process where more than one processes were carried out in the factory as well as in case of composite mill also where entire processes were carried out in a unit.

3.6 He further submits that the Notifications grant benefits of deemed credit on the inputs stated therein in the table whether directly or indirectly contain in the final products specified therein except for tariff item mentioned in the bracket e.g. 5207.20 which is other fabrics, not subject to any process. Except explanation No. 3 no other provisions restricts the scope of the Notification, on the contrary grants benefit of deemed credit to the manufacturer processors for all inputs and final products mentioned in the table with certain exception of products and not to processed fabric. In their humble view explanation cannot curtail or restrict the benefits granted by the Notification without any reference to the main contents of the Notification. No other provisions or contents of the Notifications provide like that therefore, there was no need to explain such things with the help of explanation. He placed reliance on decision in the case of Commissioner of Cus (Prv.), Amritsar Vs. Malwa Industries Ltd. – 2009(235)ELT 214(SC).

3.7 He also submits that the revenue failed to appreciate that the said Notifications were issued under the provisions of Rule 57AK of the Central Excise Rules, 1944 / Rule 11 of the Cenvat Credit Rules, 2001 / Rule 11 of Cenvat Credit Rules 2002, which very specifically provides that even if the declared inputs are not used directly by the manufacturer of final products declared in the said Notification, but are contained in the said Final Products, Cenvat Credit is allowable. Thus, in grey fabric and bleached & mercerized fabric declared inputs Cotton Yarn of 5206, Chemicals, packing materials were contained therefore, benefit of deemed credit is admissible. He placed reliance on the following decisions.

- Commissioner of Central Excise Vs. M B Dyers -2010(253)ELT 402 (Del)
- Commissioner of Central Excise Vs. Shyam Dyers -2017(357)ELT 16 (All).

3.8 He further submits that the exemption under Notification No. 214/86-CE dated 25.03.1986 as amended was admissible to the description of the goods mentioned in column No.2 of the table manufactured in a factory as Job work and used in or in relation to the manufacture of final products specified in column No. 3 of the table but was not admissible to the goods " Woven Fabrics classifiable under

Chapter 52/ Fabric of Cotton of Chapter 52". Therefore, in that case though goods were manufactured on job work basis in commercial parlance, duty of excise had to be paid by the person who had manufactured the goods. Since, both job workers viz. the processor of bleaching and mercerizing and appellants were manufacturer and benefit of Notification No. 214/86-CE dated 25.03.1986 was not admissible to the goods manufactured by them, they were manufacturer of final products. Therefore, if at one stage duty of excise was paid by availing benefit of Notification viz., deemed credit then definitely at next stage when such goods are supplied to other manufacturer scope of availment of deemed Credit is not available as per para 4 and no manufacturer leave the benefit of Cenvat Credit of duty paid at full rate and avail partial amount as deemed credit. Therefore, Appellants were eligible for deemed credit whether they had received Grey Fabric or Bleached Fabrics from other job worker /manufacturers as nobody had availed benefit of said Notification nor paid duty of excise at any stage. Only appellants have wished to avail benefit of deemed credit under the said Notification first time in entire process. Further, since the benefit of exemption for goods manufactured on Job Work basis for manufacture of Woven Fabrics/ Fabrics of cotton was not admissible, they were not required to keep any documents or records in this regard but definitely since such processors become manufacturer, manufacturer for other than exempted goods had maintained records and books of accounts for the goods manufactured and exported.

3.9 He submits that while observing that the original invoice and lorry receipts could not be produced, the authority failed to consider that they were demanding documents after almost 10 years and the universal fact is that no businessman keeps records for 10 years. Even otherwise, since the Appellant was acting as job worker the said documents were the property of the merchant exporter and hence the said authority was supposed to inquire with Exporter and not from the appellant. From the documentary evidence produced and on the basis of statements recorded by the investigation officer it is crystal clear that the Appellants have received grey fabrics from the merchant exporter either in the premises or on instruction of the appellant the merchant exporter had directly forwarded to the Job Worker for bleaching and mercersing process where the control of said grey fabrics was of the Appellant and accordingly it can very well be said that the Appellant has not received processed fabrics accordingly Explanation 3 of the relevant notification would not be applicable, consequently the Appellants would be eligible for deemed credit under the respective notification.

04. The Learned Counsel Shri Paresh Sheth appearing on behalf of the appellants i.e M/s Deepak Processors, M/s Jagjit Textile Dying & Printing and M/s R.B. Prints also argued that appellants are entitled for benefit of deemed credit.

4.1 Therefore, both the learned Counsels prayed that the impugned order be set aside.

05. On the other hand, Shri G. Kirupanandan, learned Superintendent (AR) appearing for the revenue reiterates the findings in the impugned orders. While drawing our attention to the findings of the learned Commissioner (Appeals), he submits that none of the appellants submitted any proof to prove that they have received grey fabrics as inputs. Therefore benefit of deemed credit is not admissible to the Appellants.

06. We have considered the submissions made by both sides and perused the records. The issue that falls for consideration in this case is whether the appellants are eligible to avail the benefit of deemedcredit. We find that the Tribunal while remanding the matters for de-novo had observed as under:

> "---------- *This would indicate that the appellants had received gray fabrics and the same were sent for Job work, since this facts has not been challenged by the Revenue, before the Commissioner (Appeals) , we have to go on the footing that what was received by the processor, who are the appellants herein, was gray fabrics which was sent out for bleaching and mercerizing. Therefore, prima facie we cannot not deny the benefit of deemed credit under the relevant notification as granted by the Deputy Commissioner. We find that this fact whether grey fabrics were received or it was mercerized & bleached fabrics that were received are issue which are being contended before us since prima facie we find that gray fabrics were admitted & not to have been challenged, as having been received, as were found by the original authority, we cannot deny the benefit of the Notification. However, keeping in mind,*

> *the other issues raised by the Learned Advocate for the appellants as regard the eligibility, we do not arrive at any finding thereon since, we are intending to remand these matters back to the Original authority to determine and grant the credit, if gray fabrics were received by the processors and thereafter sent for job work of bleaching and mercerizing even without physical receipts and bleached and mercerized fabrics were thereafter received back for further processing. The objection of cotton fabrics not being mentioned in Notification No. 214/86 and the procedure for Job working not being intimated and permission taken are not issue in which the benefit of job work could be denied, following the decisions in the case of---------------------."*

From the above finding of tribunal it is clear that the tribunal has given direction to verify the facts that Appellants have received grey fabrics or not if received grant the benefit of notifications. However ongoing through the finding of both adjudicating authority and documents submitted by the appellants we find that appellants have failed to produce authentic documents regarding the receipts of grey fabrics. No original copies of bills/ invoices and transport documents related to the receipts of grey fabrics are available with any of the appellant.

6.1 Further, ongoing through the relevant Explanation of the Notifications we find that it has been expressly provided therein that, where processed fabrics itself is used as an input for further processing then, the provisions of the notification are not applicable.

6.2 We find that the denial of deemed credit to the appellants by the lower authorities in absence of the proper documentary evidence appears to be prima facie correct. However, to meet the end of justice, we are of the view that one more opportunity can be given to the appellants for production of all the documents which prove that they had received the grey fabric and consequently eligible to deemed credit.

07. In view of the above discussion and finding, we are of the view that the matter may be reconsidered once again. Accordingly,

the impugned orders are set aside. The appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 25.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul