CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 1

Excise APPEAL NO.10778 of 2019

(Arising out of Order-In-Appeal No.CCESA-SRT(APPEAL)/PS-603/2018-19 dated 29.11.2018 dated passed by Commissioner (Appeals) Central Excise & CGST, Surat)

Commissioner of Central Excise & Service Tax-SURAT-I **……Appellant**
(New Central Excise Building,
Gandhi Baug, Chowk Bazar, Surat-390001)

Vs.

M/s OPAL FABRICS, **…..Respondent**
(7401/3A, Ground Floor,
Road No.73, GIDC, Sachin, Surat)

APPEARANCE:

Shri Rajesh K Agarwal, Authorised Representative for the Appellant
None, for the Respondent

CORAM:
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10457/2026

DATE OF HEARING : 13 March, 2026
DATE OF DECISION : 13 March, 2026

SANJIV SRIVASTAVA:

This appeal filed by revenue is directed against Order-In-Appeal No.: CCESASRT(APPEAL)/PS- 603/2018-19 dated 29.11.2018. By the impugned order the appeal filed by the revenue against order in original No. 07 to 08/ADC-OP/Dem/Div III/SRT-II/2017-18 dated 16.05.2017 has been dismissed.

2.1 Respondent was an 100% Export Oriented Unit, engaged in the manufacturing of grey fabrics/Twisted Yarn failing under Chapter heading No 5402 of the Customs Tariff Act, 1985.

2.2 They cleared finished goods, rejected and waste in DTA availing benefit of Notification No. 2/95-E dated 04.01.1995 and 13/98-CE dated 02.06.1998, as amended from time to time. In term of above said notifications goods are allowed to be sold in India in accordance with provisions of sub-paragraph (a), (b), (c), (d) or (f) of paragraph 9.9 or paragraph 9.20 of the Exim Policy 1997-2002. The Para 9.9(a), 9.9(b) and 9.20 were amended w.e.f. 01.04.1999 to the effect that condition of clearance in DTA was changed from "25% of the production in value terms" to 50% of FOB value of exports" i.e. physical exports. However, the respondent had cleared their finished goods, rejects and waste in DTA on the basis of 50% of deemed export value as per Para 9.10 of the Exim Policy 1997-2002 instead 50% of FOB value of physical exports as per Para 9.9(a), 9.9(b) and 9.20 of the Exim Policy during the period Oct-1999 to Feb-2001.

2.3 Thus respondent wrongly availed the benefit of concessional rate of duty on clearance of finished goods in DTA under Notification No. 2/95-CE dated 04.01.1995 & 13/98-CE dated 02.06.1998, as amended from time to time, as they failed to export their goods out of India.

2.4 Further respondent allegedly contravened the provisions of Notification No.53/97-Cus dated 03.06.1997, in as much as they procured duty free raw material in terms of said notification and consumed it in manufacture of finished goods and waste removed illicitly under the guise of DTA sale, instead of using the same for manufacture of export goods.

2.5 Two Show Cause Notices dated 08.05.2000 and 04.04.2005 were issued to the respondent asking them to show cause as to why:

A. SCN DATED 08.05.2000

(i) the duty amounting to Rs. 50,05,139.00 short paid by them should not be demanded and recovered from them under Rule 9(2) of Central Excise Rules, 1944 read with Section 1 1A of Central Excise Mt, 1944 as well as Section 72 of Customs Act, 1962 read with Section 28 of Customs Act, 1962

(ii) the penalty for contravention of the rules /sections as enumerated in fore going pares should not be imposed upon them under Rule 1730 (1) of Central Excise Rules, 1944 read with Section 11 AC of Central Excise Act, 1944 and Section 114 A of Customs Act. 1982.

(iii) the interest at the rate @24% on the duty short paid should not be demanded and recovered from them under Section 11 AC of

the Central Excise Act, 1944 and Section 28 AB of the Customs Act, 1962.

B. SCN dated 04.04.2005

(A) (i) The differential duty of Excise equal to aggregate of duties of Customs amounting to of Rs. 40,94,737/- (Rupees forty lacs ninety four thousand seven hundred thirty seven only) short paid by them on clearances of rejects and waste during the period May-2000 to September-2000 should not be recovered from them under Section 11-A (1) of Central Excise Act 944. (As per Annexure "A" & "B" attached to this Show Cause Notice) by enforcing the terms of B-17 bond furnished by them.

(A)(ii) Interest at appropriate rate on amounts mentioned at (A) (i) above should not be recovered from them under Section 11-AB of Central Excise Act 1944.

(A)(iii) Penalty should not be imposed on them under erstwhile Rule 209 of Central Excise Rules. 1944 (Now Rule 25 of Central Excise Rules 2002 read with Section 1 1AC of Central Excise Act, 1944

(B)(i) The duty of excise equal to aggregate of duties of Customs amounting ta Rs.53,98,940/- (as Detailed in Annexure-"C" attached to this SCN leviable on raw material (PFY, NFY, Text Yarn) which were consumed in the manufacture of finished goods (rejects and waste) valued at Rs. 76,24,354/- procured from 100% EOU should not be recovered from them of conditions of Notification No.1/95-C.E. dated 4.1.95 & B-17 Bond under proviso to Section 11A (1) of Central Excise Act, 1944 and in terms furnished by them.

(B)(ii) interest at appropriate rate on amounts mentioned at (B) (i) above should not be recovered from them under Section 11-AB of Central Excise Act, dtd.04.01.95 and B-17 bond furnished by them.

(B)(iii) Penalty should not be imposed on them under erstwhile Rule 209 of Central Excise Rules, 1944 (Now Rule 25 of Central Excise Rules 2002) read with Section 11AC of Central Excise Act, 1944

(C)(i) The finished goods (waste and rejects) cleared in DTA unauthorizedly and the raw material consumed therein should not be held liable for confiscation under Section 111(i) and 111(o) of Customs Act, 1962 and as the said goods are not available for confiscation, why redemption fine in lieu of confiscation should not be imposed on them under Section 125 of Customs Act, 1962.

(C)(ii) Penalty should not be imposed on them under Section 112(a) of Customs Act, 1962.

D (i) The principle as to presumption of documents as laid down in Section 36A of Central Excise Act, 1944 should not be applied in relation to the documents /records produced /recovered from their custody / control and possession or other related person.

2.6 Both the Show Cause Notices were adjudicated vide order in original referred in para 1 above dropping the proceedings initiated. Aggrieved revenue filed appeal before the Commissioner (Appeal). The appeal filed by the revenue has been dismissed as per the impugned order.

2.7 Aggrieved revenue has filed this appeal.

3.1 When the matter was listed on 05.01.2026, bench observed as following in the order sheet:

"Vide Order Sheet dated 08.10.2025, the department was directed to serve the notice on the appellant. On today's date when the matter came up for hearing, Learned AR intimated that the officer from the Jurisdictional Division visited the said premises and found that the place was completely vacant, no person was present and no business activity of any kind was going on. No signboard or indication relating to the taxpayer was visible at the location. Therefore, physical delivery of the notice could not be completed. Therefore, in the interest of justice, one more opportunity is granted to the appellant on 13 March, 2026. In case of non-representation on that date, the matter to be heard on merit."

3.2 None appeared for the respondents. In terms of the directions contained in the above order sheet, and Rule 21 of CESTAT Procedure Rules, 1982, the appeal has been taken up for consideration.

3.3 We have heard Sh. Rajesh K Agarwal, Authorized Representative for the revenue. He reiterated the grounds taken in the appeal filed by the revenue.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

"5.1 The issue in present case is that whether the respondent had wrongly cleared their finished goods, rejects and waste in DTA on concessional I rate of duty on the basis of 50% of deemed export as in terms of the provisions of Para 9.9(a),9.9(b) and 9.20 of the EXIM Policy 1997-2002, the DTA sale entitlement of an EOU was 50% of FOB Value of Exports. According to the department FOB Value of Exports means Physical Exports i.e. exports out of India only. In the instant case, the respondent had effected the DTA clearances on the basis of Deemed Export i.e., clearances made to other 100% EOUs and there is no dispute on this count.

5.2 It is observed that in the instant case, the demand of duty was set aside by treating deemed exports at par with the physical exports on the basis of judgments in the case of Commissioner of C.Ex. & Cus., Surat Vs. Amitex Silk Mills P.Ltd. [2007(216)ELT 589(Tri-Ahmd.)] and the subsequent judgments in the case of Commissioner V. Sri Saritha Synthetics & Industries Pvt. Ltd.[2016(335)ELT A203(S.C.)], Surat Jari Pvt. Ltd[2014(309)ELT A93(S.C.)], Nandan Synthetics Pvt. Ltd. [2015(319)ELT A119(SC)] and Mudra Texturing Pvt. Ltd.[2010(255)ELTA81(SC)] wherein civil appeals filed by the department on the same issue were dismissed by the Hon'ble Supreme Court. It was also mentioned in the impugned order that the judgment in the case of Amitex Silk Mills P Ltd. supra has been upheld by the Hon'ble Supreme Court[2010(254)ELT A98(SC)]. Whereas the department has placed reliance on the judgment in the case of BAPL Industries Ltd. Vs. Union of India [2007(211) ELT 23(Mad.)] and the judgment in the case of Jumbo Bags Ltd Vs. Commissioner of Customs, Chennai [2011(268) ELT81 (Tri-Chennai)]. The judgment in the case of Jumbo Bags Ltd. relied upon by the department, it was held that "50% of free on board value of exports" appearing in Exim Policy and Notification No. 2/95-CE to be taken as referring tc physical *exports out of India and deemed exports should not be taken into account while calculating DTA entitlement under Paragraph 9.9(b) of the EXIM Policy and Notification No. 2/95-CE. It is also observed that the judgment in the case of BAPL Industries Ltd. Vs. UOI[2007(211)ELT 23(Mad.)] relied upon by the department. Hon'ble Madras High Court had taken a similar stance*

5.3 It is further observed that the judgments in the case BAPL Industries Ltd. supra and the judgment in the case of Jumbo Bags Ltd. supra were relied upon by the department in the case of Nandan Svnthetics Ltd. Vs. Commissioner of C.Ex. & S.T. Daman [2015(315)ELT454(Tri-Ahmd.)], however the same were distinguished and Hon'ble Tribunal held that assessee are eligible to clear goods in DTA by taking 50% o deemed exports value. It is also noticed that departmental appeal against the said judgment of Hon'ble Tribunal has been dismissed by the Apex Court [2015(319) ELT A119(SC)]. It is further noticed that Hon'ble Supreme Court in the case of Commissioner of C.Ex. Gujarat Vs. Aditya Yarns Pvt. Ltd. [2017(52)STR 82(S.C.)] has held that the issue cannot be reopened since the same was dismissed by Supreme Court in the case of Amitex Silk Mils Pvt. Ltd.[2006(194)ELT344(Tribunal)]. The said judgment is reproduced below

> *"[Order]. - It is evident from the impugned order that before the Tribunal it was conceded by learned counsel for the revenue that the issue raised in the appeal/ had already been decided against the revenue vide its earlier decision in the case of M/s. Amitex Silk Mills Pvt. Ltd. v. Commissioner of Central Excise, Surat- I, 2006 (194) E.L.T. 344 (Tri. - Del.). The said decision had also been followed by the Tribunal in a number of cases. Mr. Harish Chander, learned senior counsel appearing for the revenue concedes that the appeal preferred by the revenue against the decision of the Tribunal in Amitex Silk Mills Pvt. Ltd. (supra) has been dismissed by this Court. He, however, submits that the said decision is clearly distinguishable on facts.*
>
> *2. We are unable to agree with learned counsel for the Revenue. Having conceded before the Tribunal that the issue raised in the present case stood concluded by an earlier decision, which*

attained finality on the dismissal of the appeal, the revenue cannot be permitted to re-open the same issue all over again before this Court on the ground that facts of the two cases were not similar.

3. Accordingly, following the decision of this Court in Amitex Silk Mills Pvt. Ltd. (supra), the appeal is dismissed.""

5.4 It is also observed that the judgments in the case of BAPL Industries Ltd. supra and the judgment in the case of Jumbo Bags Ltd. supra were canvassed by the department before the Hon'ble Gujarat High Court in the case of Commissioner of Central Excise & Customs Vs. Gujarat Fashions P. Ltd. [2015(315)ELTA86(Guj.)] but the departmental appeal were dismissed by the Hon'ble High Court.

4.3 The impugned order has been challenged by the revenue stating as follows:

09. The Commissioner (Appeals) has erred in not considering the facts that the respondent have obtained permission for DTA sale for Rs. 80.00 lakh vide letter dated 23.02.2000. However, the respondent cleared the goods viz. 1365223.00 L.Mtrs. valued at Rs. 83,95,447/- during March, 2000 to April, 2000 and thus exceeded the clearance during the March, 2000 to April,2000 and thus clearance made by the respondent after that period was treated as without permission of Development Commissioner i.e. without permission of DTA sale. In of this, the order passed by the view Commissioner (Appeals) is not correct and required to be set aside in the interest of justice.

10. The Commissioner (Appeals) as well as adjudicating authority have erred in not considering the law that the plain language used both in para 9.9(b) of the EXIM Policy and the amended Notification No. 2/95 refers to 50% of the free on board value of exports. The expression "Free on Board'" or "FOB" is an international commercial term (Incoterm) which refers to an export consignment placed on board a vessel, ready to leave the domestic territory of a country. The expression "export" is defined under Section 2(18) of the Customs Act, 1962 as follows -

"Exports", with its grammatical variations and cognate expressions means taking out of India to a place outside India.

Section 2(e) of the Foreign Trade (Development & Regulation) Act 1962 defines import and export as follows-

> *"Import" and "Export" means respectively bringing into or taking out of India, any goods by land, sea or air*

The definition of 'Exports' under the Customs Act, 1962 and under the Foreign Trade (Development & Regulation) Act, 1992 are similar and both mean taking goods out of India. Hence, the expression "50% free on board value of export" appearing in the EXIM Policy and Notification No. 2/95 have to be taken as referring to physical exports out of India in the light of definitions of export given in the Foreign Trade (Development and Regulation) Act, 1992 and the Customs Act, 1962 respectively. When the plain language used in the policy and notification read with the statutory definitions is so straight forward and clear, the same requires no tools of interpretation to get at the real meaning of the expression. The fact that the deemed exports are counted towards fulfillment of export obligation as a concession under a separate provision namely para 9.10 cannot automatically entitle the appellants to a duty concession under para 9.9 and Notification No. 2/95, when the lawmakers have not specifically provided for inclusion of such domestic clearances for the purpose of calculating DTA entitlement In view of above, the orders passed by the lower authorities are not correct and required to be set aside in the interest of justice.

11. The Commissioner (Appeals) has erred in not considering the notification for the reason the exemption notification requires to be strictly preposition of law that there cannot be any addition or subtraction from the construed by the Courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous.

In Commissioner of Customs, Kolkata v. Rupa & Co. Ltd., (2004) 6 SCC 408, this Court has observed that the exemption notification has to be given strict interpretation by giving effect to the clear and unambiguous wordings used in the notification.

In Commissioner of Central Excise, Trichy v. RukmaniPakkwell Traders, (2004) 11 SCC 801, this Court has also held: "5. ….It is settled law *that exemption notifications have to be strictly construed. They must be interpreted on their own wording. Wordings of some other notification are of no benefit in construing a particular notification."*

In Kohinoor Elastics (P) Ltd. v. Commissioner of Central Excise, Indore, (2005) 7 SCC 528, this Court has held: "7. When the wordings of the notifications are clear and unambiquous they must be given effect to. By a strained reasoning benefit cannot be given when it is clearly not available."

In view of above also, the order passed by the Commissioner (Appeals) is not correct and required to be set aside in the interest of justice.

12. The lower authorities have failed to consider the preposition in law that the Board's Circular F. No. 305/48/2000-FTT dated 07.04.2000 makes it very clear that DTA sales entitlement would be upto 50% of FOB value i.e. physical exports only. When the above said circular was challenged in the jurisdictional High Court in the case of BAPL Industries Ltd. Vs. Union of India - 2007 (211) ELT 23 (Mad.), the Hon'ble Madras High Court held that physical export and deemed export are different and that the impugned circular dated 07.04.2000 is not ultra vires the provision of Foreign Trade (Development and Regulation) Act, 1992, EXIM Policy or the constitution of India.

Further, in the case of Ranadey Micronutrients Vs. Collector of Central Excise - 1996 (87) ELT 19 (SC) the Hon'ble Apex Court held that: Department clarifications - Circular issued by the CBEC - Object and validity- Such circulars meant for adoption of uniform practice- Suc circulars binding on officers of the Revenue Department and they cannot repudiate a circular on the ground that it is inconsistent with a statutory provision - Consistency and discipline are of greater importance winning or losing a court case - Section 37B of the Central Excises and Salt than Act, 1944.

The said judgment of Hon'ble Supreme Court of India is equally binding on departmental officers and thus the lower authorities have grossly erred by not taking into consideration the Board's Circular dated 07.04.2000 (supra). In view of this also, the orders passed by the lower authorities correct and required to be set aside in the *interest of justice are not correct and required to be set aside in the interest of justice.*

13. The Commissioner (Appeals) has failed to appreciate the fact that the department has filed SLP in Supreme Court of India against the order of Hon'ble High Court in case of E.I.Dupont India Pvt. Ltd. VS. UOI - 2014 (305) ELT 282 (Guj.) on similar issue and the same has been admitted in Supreme Court of India on 05.02.2016. In view of the above, the lower authorities have grossly erred in holding that "Deemed Export" to be at par with "Physical Export" for computation of the value upto which the respondent was entitled to clear their finished goods in DTA in terms of para 9.9(b) of the Exim Policy. In view of this also, the order passed by the Commissioner (Appeals) is not correct and required to be set aside in the interest of justice.

14. The lower authorities have erred while passing the order not to take cognizance of the Circular No. DGEP/EOU/74/2008 dated 02.01.2009 issued by the Directorate General of Export Promotion wherein it has been clarified that for calculating DTA entitlement only physical exports should be taker into account. In view of this also, the order passed by the lower authorities are not correct and required to be set aside in the interest of justice."

4.4 From the plain reading of the impugned order it is evident that the impugned order proceeded to dismiss the appeal filed by the revenue, by following the order of tribunal in case of Amitex Silk Mills P. Ltd. [2007 (216) ELT 589 (T-Ahmd)] and other decisions referred in the impugned order. The decision of Tribunal in the c ase of Amitex has been upheld by Hon'ble Supreme Court as reported at [2010 (254) ELT A98 (SC)]. Revenue has in their appeal not sought to distinguish the decision of Amitex Silk Mills nor have stated that the said decision is not applicable to the facts of the present case but have sought to reopen the issue by going to the interpret the exemption notifications again contrary to the interpretation placed by Tribunal in the case of Amitex (affirmed by Hon'ble Supreme Court). We do not find any merits in the said approach of the revenue. The ratio decidendi of a decision is binding on all the authorities and need to be followed to maintain consistency and judicial discipline.

4.5 Revenue has also sought to rely upon the Circulars dated 07.04.2000 and 02.01.2009 to argue that in terms of the decision of the Hon'ble

Supreme Court in case of Ranadey Micronutrients [1996 (87) ELT 19 (SC)]. We do not have any dispute with the preposition laid down by the Hon'ble Apex Court in the said decision. In case of Ratan Melting and Wire Industries [2008 (231) E.L.T. 22 (S.C.)] a five judges bench of Hon'ble Supreme Court observed as follows:

> ***"5.*** *Learned counsel for the assessee on the other hand submitted that once the circular has been issued it is binding on the revenue authorities and even if it runs counter to the decision of this Court, the revenue authorities cannot say that they are not bound by it. The circulars issued by the Board are not binding on the assessee but are binding on revenue authorities. It was submitted that once the Board issues a circular, the revenue authorities cannot take advantage of a decision of the Supreme Court. The consequences of issuing a circular are that the authorities cannot act contrary to the circular. Once the circular is brought to the notice of the Court, the challenge by the revenue should be turned out and the revenue cannot lodge an appeal taking the ground which is contrary to the circular.*
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> ***6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.***
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> ***7.*** *As noted in the order of reference the correct position vis-a-vis the observations in para 11 of Dhiren Chemical's case (supra) has been stated in Kalyani's case (supra). If the submissions of learned counsel for the assessee are accepted, it would mean that there is no scope for filing an appeal. In that case, there is no question of a decision of this*

Court on the point being rendered. Obviously, the assessee will not file an appeal questioning the view expressed vis-a-vis the circular. It has to be the revenue authority who has to question that. To lay content with the circular would mean that the valuable right of challenge would be denied to him and there would be no scope for adjudication by the High Court or the Supreme Court. That would be against very concept of majesty of law declared by this Court and the binding effect in terms of Article 141 of the Constitution."

4.6 Following the above referred decision Hon'ble Supreme Court has in the case of Bharti Airtel Ltd. [2025 (391) E.L.T. 3 (S.C)] observed as follows:

> ***11.9.19****The Revenue has also sought to rely upon a circular under F. No. 137/315/2007-CX.4, dated 26-2-2008 issued by the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance specifying that …….*
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> ***11.9.20 We are of the considered opinion that though the Revenue/Department may issue any such circular based on their understanding of the matter and the Revenue authorities/officers are bound to follow it, yet, in view of the findings arrived at by us in these proceedings, the said circular would be of no avail and to the extent the same is contrary to our findings in these proceedings would not be enforceable and would be liable to be withdrawn.***
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> ***11.9.21****In Commissioner of Central Excise, Bolpur v. Ratan Melting & Wire Industries (2008) 14 SCR 653 = 2008 (231) E.L.T. 22 (S.C.)], it was held that,*
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> *"6. ………. [Emphasis added]*
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> *The aforesaid proposition of law was reiterated in Commissioner of Central Excise v. Hindoostan Spinning and Weaving Mills Ltd. (2009) 14 SCC 221.*
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> ***11.9.22*** *In a recent judgment in Ranadey Micronutrients v. Collector of Central Excise [(2022) 18 S.C.R. 28= 1996 (87) E.L.T. 19 (S.C.)] , it was held that while the departmental circulars in operation are binding upon the officers of the Revenue, to the extent it is contrary to the statute must be withdrawn by holding as follows :*

> *"15. There can be no doubt whatsoever, in the circumstances, that the earlier and later circulars were issued by the Board under the provisions of Section 37B, and the fact that they do not so recite does not mean that they do not bind Central Excise officers or become advisory in character. There can be no doubt whatsoever that after 21st November, 1994, Excise duty could be levied upon micronutrients only under the provisions of heading 31.05 as "other fertilisers". If the later circular is contrary to the terms of the statute, it must be withdrawn. While the later circular remains in operation the Revenue is bound by it and cannot be allowed to plead that it is not valid."*

[Emphasis added]

4.7 Revenue has in its appeal referred to the decision of Hon'ble Gujarat High Court in case of E I Dupont [2014 (305) ELT 282 (Guj)] on which the reliance has been placed by the lower authorities while setting aside the show cause notices, and stated that this decision has not acquired finality as the appeal filed by the revenue has been admitted by the Hon'ble Supreme Court. However we find that the said appeal has also been dismissed as reported at [2024 (390) E.L.T. 292 (S.C.)] on the ground of low tax affect, observing as follows:

> *"The Learned Senior Counsel appearing for the appellants fairly pointed out that the tax effect amount involved in these appeals is less than the prescribed limit (Rupees two crores). Therefore, as per the prevailing policy of the appellant-Union of India, the appeals will not be prosecuted. Only on that ground, we dispose of the appeals."*

4.8 In case of JBM Auto [2017 (353) E.L.T. 436 (All.)] Hon'ble Allahabad High Court observed as follows:

> *"5. The aforesaid precise question had come up for consideration before the Gujarat High Court in the case of Commissioner of Central Excise and Customs v. NBM Industries - 2012 (276) E.L.T. 9 (Guj.). The Division Bench of the Gujarat High Court relying upon its earlier Division Bench decision in Commissioner of Central Excise v. Shilpa Copper Wire Industries - 2011 (269) E.L.T. 17 (Guj.) and unreported decisions of the Supreme Court in Ginni International Limited - 2007 (215) E.L.T. A102 (S.C.), Amitex Silk Mills Private Limited, and*

Sanghai Textiles Limited wherein it was held that the Revenue cannot dispute that deemed export should not have been taken into account for the purposes of refund under the Rules, and thus, the Tribunal has not committed any error of law in treating the sale made to the 100% (EOU) as deemed export for the purposes of entitlement of refund of unutilized Cenvat credit contemplated under Rule 5 of the Cenvat Credit Rules, 2004. The decision of the Madras High Court in the case of BAPL Industries Limited v. Union of India - 2007 (211) E.L.T. 23 (Mad.) was also considered but was not followed.

6. The aforesaid decision of the Gujarat High Court has been followed by the another Division Bench of the Gujarat High Court in the case of E.I. Dupont India Pvt. Ltd. v. Union of India - 2014 (305) E.L.T. 282 (Guj.). The above decision of the Gujarat High Court has not been challenged any further and as such on date is conclusive and final.

7. In view of the above two decisions of the Gujarat High Court which are based upon the decisions of the Supreme Court the contrary decision of the Madras High Court in the case of BAPL Industries Limited (supra) is of no help to the Revenue specially when it has been considered and distinguished."

4.9 Thus we do not find any merits in the appeal filed by the revenue.

5.1 Appeal filed by the revenue is dismissed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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