IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/2992/2012-EX[DB]

(Arising out of Order-in-Original No. 01/CE/Commissioner/2012 dated 30/05/2012 passed by Commissioner of Central Excise, Kanpur)

M/s Standard Niwar Mills **Appellant**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Request for adjournment for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 23/05/2018
Date of Decision : 23/05/2018

FINAL ORDER NO. **71123 / 2018**

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Original No.01/Central Excise/Commissioner/2012 dated 30.05.2012 passed by Commissioner Central Excise, Kanpur. The Appellant requested for adjournment. The request is rejected and appeal is taken up for decision.

2. Brief facts of the case are that the appellant were manufacturers of 'tent' made of 'cotton'. They availed facility of Cenvat Credit. They classified the goods manufactured by them under Tariff Item No.63062100 of Schedule to Central

Excise Tariff Act, 1985. They availed the benefit of Notification No.29/2004-CE dated 09.07.2004 and paid Central Excise duty @ 4% ad valorem. They also filed statutory returns. It appeared to Revenue that the goods cleared by the appellants were not eligible to avail benefit of Notification No.29/2004-CE dated 09.07.2004 which was admissible for all the goods falling under Chapter 61, 62 and 63 (except 63090000 and 6310) made of cotton, not containing any other textile materials. There was another entry in the said Notification which attracted duty @ 8% ad valorem in respect of goods other than "made of cotton not containing any other textile materials". It appeared to Revenue that other materials used in the manufacture of tent such as made up of Aluminum like Aluminum Joints, pipes etc., were covered by other entry which attracted 8% duty ad valorem. Therefore, for the period from 2006-07 to 2010-11 appellant were issued with a Show Cause Notice dated 05.09.2011 demanding Central Excise Duty of Rs.50,86,530/- in respect of such other materials like Aluminum Pipe, Joints etc., which were used in the manufacture of said tents under proviso to sub Section (1) of Section 11A of Central Excise Act, 1944. On contest issue was decided through impugned Order-in-Original through which the demand was confirmed and equal penalty was imposed. Agreed by the said order appellant preferred present appeal before this Tribunal.

3. Heard the learned AR who has submitted that the issue is no more res-integra in view of this tribunal's decision in the case of Commissioner of Central Excise, Lucknow vs. A.R. Polymers Pvt. Ltd reported at 2017 (349) E.L.T. 645 (Tri.–All.).

4. We have carefully gone through the case record and submissions made by the learned AR. Further we have also gone through the final order in the above stated case. We find that the facts of the present case are fully covered by the said case law. In the said final order it was held as follows.

"*Having considered the rival contentions and on perusal of records, we find that there is no dispute that the goods cleared by the respondent-assessee are falling under Chapter 63. There is also no dispute that said Notification No. 29/2004-C.E., dated 09.07-2004 provides exemption to all the goods failing under Chapter 61, 62 & 63 except goods of sub-heading No. 6307.10. There is no dispute that the tents cleared and referred by the said show cause notices did not contain any textile materials other than cotton. Therefore, we find that the description of the goods covered by the said show cause notice matches with the entry in the said notification stating to be "cotton, not containing any other textile material". Therefore, we hold that during the period covered by these appeals the goods covered by the said show cause notice were rightfully attracting 4% duty as provided by the said exemption under Notification No. 29/2004-C.E., dated 09-07-2004. Therefore,* *we dismiss both the appeals filed by Revenue. The respondent-assessee shall be entitled for consequential relief."*

5. In view of the precedent decision of this Tribunal we hold that the impugned Order-in-Original is not sustainable. We, therefore, set aside the impugned Order-in-Original and allow the appeal. The appellant shall be entitled for consequential relief as per law.

(Pronounced in Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Ankit