CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 1965 of 2011

(Arising out of Order-in-Appeal No.344/2011 dated 6.5.2011 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.)

M/s. Minerva Mills Post Box No.2310, Magadi Road, Bangalore – 560 023.	Appellant(s)

Versus

Commissioner of Central Excise Bangalore-III Commissionerate Queens Road, Bangalore.	Respondent(s)

<u>Appearance:</u>

Shri Raghavendra B. Hanjer, Advocate	For the Appellant
Shri H. Jayathirtha, Authorised Representative	For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

<u>FINAL Order No. 20066 /2024</u>

Date of Hearing: 08.01.2024
Date of Decision: 08.01.2024

Per : R. BHAGYA DEVI

The appellant M/s. Minerva Mills, a unit of M/s. National Textile Corporation (NTC) manufactures textiles fabric, terry towels, etc. the appellant undertakes processing of their own cloth and also receives grey fabrics from other units of NTC for processing like bleaching/dyeing and mercerizing on job work basis. For the goods received on job work basis from Karnataka Handloom Development Corporation (KHDC) a state government undertaking the appellant adopted selling price declared by KHDC while returning the processing cloth to KHDC. However, the Department observed that the value adopted by the appellant was incorrect and therefore, it needs to be re-determined by including the landed cost of the raw materials, processing charges, and all other relevant charges as per Section 4 of the Central Excise Act, 1944. Accordingly, the Original Authority adopting the principle specified by the Hon'ble Supreme Court in the case of **Ujagar Prints: 1989 (39) ELT 493 (SC)**, the assessable value was re-determined taking into consideration the landed cost of the raw materials and all other processing charges including the profit of the processors, which was upheld by the Commissioner (Appeals). The appellant accepting the re-determining of the assessable value contested only on the issue of time bar before the Commissioner (A). The Commissioner (A) in the impugned order held that since the appellant had not followed the cost construction method though they were aware of the fact that the landed cost including the processing charges had to be taken into account for discharging their duty liability they had willfully mis-declared the cost. It is also stated by the Commissioner (A) in the impugned order that this fact came to the notice of the department only when the audit party had verified the records of the appellant and since all the facts were known to the department, only on the visit of the audit party it is a clear case of suppression and accordingly he justified the allegation of mis-declaration and suppression. The appellant is in appeal before us only on the question of time limit.

2. During the hearing, it was submitted by the learned counsel for the appellant that when the appellant received the grey fabrics and after processing, the grey fabrics were returned to KHDC, KHDC declared the selling price of the processed fabric and therefore, they declared the same selling price and paid excise duty based on the selling price declared by the KHDC. The clearances were made by filing statutory price declaration from time to time to the Central Excise Department till the time audit visited them in 2002, no objections were raised on these declarations. It is also submitted that the processed fabrics was not meant for sale in open market but for free distribution to the downtrodden school children and the entire cost was borne by the State Government. The appellant under a *bona fide* belief that the price declared by the KHDC included the real cost of the grey fabric and the processing charges paid duty on that selling price. It is only on issuance of CBEC circular No.619/10/2002-CX dated 19.2.2002 and No. 643/34/2002-CX dated 1.7.2002 the department object to the valuation adopted by the appellant. Accordingly, show-cause notice dated 1.8.2003 was issued for the differential duty amount of Rs.27,01,925/- for the period July 1998 to September 2002 along with interest and penalty. The demand was confirmed by the Commissioner (A) vide Order-in-Appeal No.66/2004 dated 30.06.2004 and an appeal was filed

against this order. The Hon'ble Tribunal vide Final Order No.948/2009 dated 13.07.2009 allowed the appeal by way of remand to the Commissioner (A) for reconsideration of the issue afresh. On remand, the present impugned order is passed by the Commissioner (A) confirming the demands by upholding the mis-declaration and suppression. It is further submitted by the appellant when this issue was taken up KHDC vide their letter dated 22.6.2002 it was clarified that the cost of grey fabric indicated in the delivery note was based on standard procurement rates and it is the correct value of the grey fabrics. Further, KHDC vide letter 31.10.2002 furnished the landed cost duly certified by the Chartered Accountant and the appellant also furnished the actual job charges collected from KHDC during the said period. The appellant further submits that as per the landing cost and processing charges, and after taking into account the deemed credit available to them the excise duty payable by them is Rs.7,13,398/- and therefore, they are eligible for refund of Rs.37,66,124/-. On limitation, it is claimed that they have been filing statutory price declaration along with RT-12 returns clearly indicating the selling price of the processed fabrics as declared by KHDC. Since the show-cause notice and the orders admit that the demands are based on the price declaration filed by the appellant, there cannot be any suppression of facts on the part of the appellant with an intent to evade payment of duty. It is further claimed that periodical show-cause notices for denying the deemed credit availed on the fabrics received for job work for the period August 1999 to March 2003 were issued. Hence, it is claimed that entire demand is time barred.

3. The learned Authorised Representative for the department reiterated the findings of the lower authorities.

4. In the Final Order No. 948/2009 dated 13.07.2009, the Tribunal observed as follows:

> "Without expressing any opinion on the merits of the case, we remand the matter to the learned Commissioner (A) for reconsideration of the issue afresh."

Accordingly, the Commissioner (A) in the impugned order upheld the demand of duty on merits and on limitation. As per the Supreme Court's decision in the case of **Ujagar Prints** (supra) and based on CBEC circular No.619/10/2002-CX dated 19.2.2002 and No. 643/34/2002-CX dated 1.7.2002, it is a settled issue that the job worker has to discharge duty based on the landed cost and the processing charges and therefore, on merits the demand is upheld. From the records placed before us, it is seen that the selling price of KHDC at times it is higher than the landed cost and the duty has been discharged on this higher value which has not been disputed by the department, however, the differential duty has been demanded in all those cases where the landed cost is higher than the selling price declared by KHDC. It is also on record that the appellants have been filing all these documents before the department in terms of monthly RT-12 Returns and price declarations, therefore, it cannot be alleged that the appellant had mis-declared or suppressed the facts in as much as they had cleared the processed goods on payment of duty at the selling price declared by KHDC and it is also on record that the selling price declared by KHDC is more than the landed cost plus processing charges in some of the cases. Therefore, the fact that the material facts were suppressed or the value was mis-declared is not justified. In the case of **Uniworth Textiles Ltd. vs. Commissioner of Central Excise, Raipur** dated on 22-1-2013 **2013 (288) E.L.T. 161 (S.C.)** the Supreme Court while dealing with the proviso to Section 11A on limitation observed that:

> *"A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."*
>
> *"It is settled law that for invoking the extended period of limitation duty should not have been paid, short levied or short paid or erroneously refunded because of either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision or rules. This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or willful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation."*
>
> *This Court while interpreting Section 11-A of the Central Excise Act in Collector of Central Excise v. H.M.M. Ltd. (supra) has observed that in order to attract the proviso to Section 11-A(1) it must be shown that the excise duty escaped by reason of fraud, collusion or willful misstatement of suppression of fact with intent to evade the payment of duty. It has been observed :*
>
> > *'...Therefore, in order to attract the proviso to Section 11-A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or willful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of*

fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act.'

5. In the present case, since the facts were known to the department and there is no evidence placed on record for wilful evasion of duty with intent to evade, the question of invoking proviso to Section 11A does not arise. The impugned order is allowed to the extent of confirmation of duty only for the normal period. The appeal is allowed partially.

(Operative portion of the Order was pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv