IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. E/297 to 303/2012

(Arising out of Order-in-Appeal No.19/MAD/2012 dated 24.2.2012 and Nos. 23 to 28/MAD/2012 dated 24.2.2012 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Ambika Cotton Mills Ltd. Appellant

Vs.

CCE, Madurai Respondent

Appearance

Ms. A. Shushma Harini, Advocate for the Appellant
Shri S.Govindarajan, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **26.04.2018**

Final Order Nos. **41393-41399 / 2018**

Per Bench

Brief facts are that appellants are manufacturers of cotton yarn (not containing any other textile materials) falling under Chapter 52 of First Schedule to CETA, 1985 and are also duly registered with the Central Excise Department. They were paying duty @ 4% on cotton yarn as per Notification No.29/2004 dated 9.7.2004. This was amended by Notification

No. 58/2008 dated 7.12.2008 which prescribed nil rate of duty on cotton yarn. Thereafter, Notification No. 29/2004 was further amended by Notification No. 11/2009 dated 7.7.2009 restoring the levy of duty at the rate of 4% on cotton yarn. Again parallelly, Notification No.20/2009 dated 7.7.2009 was issued amending Notification No. 58/2008 whereby the duty prescribed on cotton yarn was omitted. Meanwhile, the department had also issued Notification No. 59/2008 dated 7.12.2008 prescribing duty at the rate of 4% of the said goods. According to appellant, during the period from 7.12.2008 to 6.7.2009, effectively the cotton yarn was never fully exempted from duty. However, department entertained a view that cotton yarn was exempted from duty during the said period. Show cause notices were issued to the appellants proposing to recover the credit availed by them alleging that since cotton yarn attracted nil rate of duty, the appellants are not eligible to avail credit. After due process of law, the original authority disallowed the credit and confirmed the demand along with interest and imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence these appeals.

2. All the above appeals, except Appeal No. E/297/2012 are regarding the demand raised for recovery of CENVAT credit. In appeal No. E/297/2012, the appellant filed rebate claim for refund of duty paid and the same was granted by the original

authority. The department filed appeal against the said order and the Commissioner (Appeals) vide order dated 29.10.2010 directed the appellant to repay the rebate sanctioned. Show cause notice was issued proposing to recover the erroneous sanctioned rebate along with interest. The appellant repaid the rebate under protest. Hence appeal No.E/297/2012 is against the order passed by Commissioner (Appeals) who directed to repay the sanctioned rebate along with interest.

3. On behalf of the appellant, ld. counsel Ms. A. Sushma Harini submitted that for the entire period cotton yarn attracted 4% of duty. Even as per the amendment, cotton yarn never remained an exempted product. The department has issued show cause notice and confirmed the demand on the erroneous assumption that cotton yarn was exempted from duty for the period between 7.12.2008 to 6.7.2009. For better appreciation, the ld. counsel has furnished a Table simplifying the position of duty on cotton yarn for the disputed which is as under:-

Date	**Notification No.**	**Rate of Duty**
09.07.2004	29 of 2004	4%
07.12.2008	58 of 2008 (Amending 29 of 2004)	NIL
07.12.2008	59 of 2008	4%
07.07.2009	11 of 2009 (Amending 29 of 2004)	4%
07.07.2009	20 of 2009 (Amending 59 of 2008)	NIL

4. The appellant was liable to pay duty on the cotton yarn for the disputed period and therefore the credit availed on inputs / capital goods / input services for the disputed period is

eligible and admissible. In fact, the confusion occurred because two notifications co-existed simultaneously in respect of exemption of cotton yarn wherein one Notification allowed full exemption prescribing nil rate of duty whereas the other Notification prescribed concessional rate of duty @4%. She relied upon the decision in the case of Arvind Ltd. Vs. Commissioner of Central Excise, Ahmedabad – [2014] 47 taxmann.com 91. Further that even assuming that cotton yarn was wholly exempted product for the said period, since duty was paid by the appellant, the credit availed is eligible as decided by the Hon'ble High Court of Bombay in the case of Repro India Ltd. Vs. Union of India – [2008] 2008 taxmann.com 943 (Bombay).

5. In respect of appeal No. E/297/2012, the ld. counsel submitted that the original authority had correctly sanctioned the rebate claim as the appellant had paid duty on the exported cotton yarn. The Commissioner (Appeals) has erroneously directed the appellant to repay the rebate sanctioned under the wrong impression that cotton yarn attracts nil rate of duty.

6. The ld. AR Shri S. Govindarajan reiterated the findings in the impugned order.

7. Heard both sides.

8. From the Table given above, as well as the copies of the notifications prevailing during the relevant period, we find that cotton yarn was never an exempted product for the disputed period. Though there were parallel notifications wherein one of the notification prescribed duty at the rate of 4% on cotton yarn, there was another notification 58/2008 dated 7.12.2008 which prescribed nil rate of duty. Thus, on the same date there were two notifications one of which prescribed nil rate of duty and the other prescribed 4% duty. The appellant can opt for a notification which is beneficial to him and the appellant herein has chosen to pay duty at the rate of 4% and claim rebate. Thus, we find that the denial of credit is without any basis and unjustified. So also the denial of rejection of rebate claim is also unjustified.

9. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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