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

Appeal No.E/274/2012

[Arising out of Order-in-Appeal No.2/2012 dated 31.01.2012 passed by Commissioner of Central Excise (Appeals), Salem]

Divya Spinning Mills Pvt. Ltd. Appellant

Versus

Commissioner of Central Excise & ST
Salem Respondent

Appearance :

Shri M. Karthikeyan, Advocate
For the Appellant

Shri R. Subramaniyan, Govindarajan, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 09.08.2018

FINAL ORDER No. 42242 / 2018

Per Madhu Mohan Damodhar

The facts of the case are that appellants had filed a refund claim of Rs.26,75,593/- on their averment that excise duty had been paid in excess of cotton yarn cleared to their related concerns. The original authority held that appellants had collected excise duty said to be paid in excess from their buyers and therefore the same had been passed on to the customers and refund was rejected. In appeal before Commissioner (Appeals), the appellants had contended that sale cannot be treated as independent sales; that it was made to their various group companies; hence it is only captive consumption; therefore there is no question of passing of duty incidence. The lower appellate authority vide the impugned order dt. 31.1.2012 however upheld the order of original authority. Hence this appeal.

2. After hearing both sides, we find that in a related issue pertaining to the very same period and transactions, proceedings had been initiated against the same assessee for recovery of alleged short payment of duty to the tune of Rs.19,97,222/- on clearances made to their sister concerns / captive consumption. The said demand had been confirmed by the original authority and on appeal, the Commissioner (Appeals) restricted the duty demand to normal period of limitation and set aside penalties imposed under section 11AC of the Act and had also given directions for considering the adjustment of excess payments claimed to have been made by the appellants. We find that appeal in that matter had been disposed of vide Final Order No.41168/2018 dt. 04.04.2018 inter alia by way of remand, to the original authority to re-quantify the duty as confirmed by the Commissioner (Appeals) for the normal period.

3. Viewed in this light, we hold that ends of justice would be properly met by remanding this matter also to the original authority for de novo consideration along with the matter already remanded as discussed above vide Final Order No.41168/2018 dt. 4.4.2018. Appeal is allowed by way of remand.

(dictated and pronounced in court)

(P. Dinesha)	**(Madhu Mohan Damodhar)**
Member (Judicial)	**Member (Technical)**

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