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

Appeal No.E/40109/2013 & E/40110/2013

[Arising out of Order-in-Appeal No.210 & 211/2012 dt. 28.09.2012 passed by Commissioner of Central Excise (Appeals), Chennai]

Ambika Cotton Mills Ltd. Appellant

Versus

Commissioner of Central Excise,
Madurai Respondent

Appearance :

Ms. A. Sushma Harini, Advocate
For the Appellant

Shri S. 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 : 09.10.2018

FINAL ORDER No. 42611-42612 / 2018

Per Shri Madhu Mohan Damodhar

In the facts of the case in both the appeals are that during the period from 07.08.2008 to 06.07.2009, the appellants had paid duty @ 4% advalorem on cotton yarn under Notification No.59/2008 dt. 07.12.2008 exported by them. It appeared to the department that Notification No.29/2004 dt. 09.07.2004 prescribing the effective rate of duty of 4% on the said cotton yarn was amended by Notification No.58/2008 dt. 07.12.2008 prescribing the 'Nil' rate. Subsequently, a Notification No.11/2009-CE dt. 07.07.2009 was issued also referring to erstwhile Notification No.29/2004-CE and restore duty of 4% advalorem on cotton yarn. Department therefore took the view that during the intervening period 07.12.2008 and 06.07.2009 the said cotton yarn was fully an absolutely exempted by a notification issued under Section 5A (1) of the Central Excise Act, 1944; that therefore the balance 50% cenvat credit in respect of capital goods received during the exempted period and taken by the appellants in April 2010 are ineligible. Accordingly, show cause notices were issued to the appellants in both these appeals inter alia proposing disallowance of the impugned cenvat credit amount with interest thereon and imposition of penalties under various provisions of law. In adjudication, original authority concerned confirmed the reversal of cenvat credits as proposed in the notice with interest, however dropped the penal proceedings thereof. In appeal, vide common impugned order dt.28.09.2012, the Commissioner (Appeals) upheld the orders of the original authorities. Hence both these appellants are before this forum in Appeal No.E/40109/2013 filed by Ambika Cotton Mills Ltd. Unit IV and Appeal No.E/40110/2013 filed by Ambika Cotton Mills Ltd. Unit III.

2. Today when the matter came up for hearing, Ld. Advocate Ms. A. Sushma Harini submits that the very same matter has already been decided by the Tribunal in favour of the appellants in their own case vide Final Order No.41393-41399/2018 dt.25.04.2018. She submits that although the Notification No.58/2008-CE dt. 07.12.2008 had reduced the duty liability from 4% to "Nil", however in Notification No.59/2008-CE issued on the same date namely

07.12.2008, had retained the effective rate of Central Excise duty of 4%. The Notification No.11/2009-CE dt. 07.07.2009 also retained the same effective rate of 4% hence there were two SCNs during the material period, one (Notification 58/2008-CE) prescribed 'Nil' rate and the other (Notification 59/2008-CE) where a rate of 4% had been indicated. In the circumstances, the effective rate of 4% was prevalent and continuous throughout the period in dispute. Hence availment of cenvat credit by both the appellants herein are very much legal and correct.

3. On the other hand, Ld. A.R Shri S. Govindarajan reiterates the impugned order.

4. Heard both sides and have gone through the facts. We find merit in the assertion of the Ld. Advocate that the issue per se has already been decided in the decision of this very Bench in the case of *Ambika Cotton Mills Ltd*. (Final Order No.41393-41399/2018 dt.25.04.2018). The relevant portion of the order is reproduced as under :

> "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 rebate claim is also unjustified.
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> 9. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any."

Following the ratio already laid down in the earlier decision, we hold that the impugned order cannot be sustained and requires to be set aside which we hereby do. Both the appeals are therefore allowed with consequential benefits, if any, as per law.

(dictated and pronounced in court)

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

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