

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]**

Appeal Nos.: E/552, 553, 554, 555/2010

Sl. No.	Appeal No.	Appellant	Respondent
1.	E/552/2010	M/s. Jansons Textile Processors, Tiruchengode, Namakkal Dist.	The Commissioner of G.S.T. & Central Excise, Salem
2.	E/553/2010	Shri. J. Srinivasa Raghavan, Authorized Signatory of M/s. Jansons Textile Processors	The Commissioner of G.S.T. & Central Excise, Salem
3.	E/554/2010	Shri. T. S. Natarajan, Partner, M/s. Jansons Textile Processors	The Commissioner of G.S.T. & Central Excise, Salem
4.	E/555/2010	Shri. T. N. Kalaimani, Partner, M/s. Jansons Textile Processors	The Commissioner of G.S.T. & Central Excise, Salem
Arising out of Order-in-Original No. 03/2010 (Commissioner) dated 31.05.2010 passed by the Commissioner of Central Excise, Salem.			

Appearance:-

Shri. Raghavan Ramabadran, Advocate
Shri. Santhana Gopalan D., 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: 05.02.2019

Date of Pronouncement: **11.03.2019**

Final Order Nos. **40434-40437 / 2019**

Per P. Dinesha :

The facts of the case are that M/s. Jansons Textile Processors, Tiruchengode (hereinafter referred to as the 'assessee') were engaged in the manufacture of woven fabrics both cotton and manmade, Terry toweling and knitted fabrics by carrying out

processes like bleaching, dyeing, printing, stentering, etc., with the aid of power and steam. They applied for permission to avail the special procedure under Section 3A of the Central Excise Act, 1944 for payment of duty under Compounded Levy Scheme on the processed textile fabrics during the period from 01.05.2001 to 31.03.2002.

2.1 Pursuant to investigations carried out by Departmental Officers, a number of apparent discrepancies emerged which *inter alia* are as under :

(i) Appellants having two Open Air Stenters in their factory, one of which was in use at the time of visit of the officers on 31.10.2001. By usage of such Open Air Stenter for processing fabrics, the appellants have violated the conditions stipulated for availment of benefit under Notification No. 16/2001-CE (NT) dated 30.04.2001 and Notification No. 32/2001-CE dated 28.06.2001;

(ii) Investment in plant and machinery as on 1st May, 2001 at original value of more than Rs. 3 crores exceeds the conditional limit stipulated in the Notification, and hence, it appeared that the assessee was not eligible to claim the exemption available to Independent Textile Processors.

2.2 In adjudication, the Commissioner vide the impugned Order dated 31.05.2010 *inter alia*:

- (i) Denied the benefit of special procedure for payment of duty under Compounded Levy Scheme in terms of Rule 96ZNA of the Central Excise Rules, 1944 under Notification No. 32/2001-CE dated 28.06.2001 during the period from 01.05.2001 to 31.03.2002. Application (Form ASP-1) dated 16.05.2001 filed by the assessee for availing permission to avail this special procedure, was rejected;
- (ii) An amount of Rs. 2,17,05,582/- was confirmed as the differential duty on the processed fabrics cleared during the period from 01.05.2001 to 28.02.2002 along with interest thereon;
- (iii) Penalty of Rs. 2,17,05,582/- was imposed on the assessee under Section 11AC of the Central Excise Act, 1944 and under Rule 173Q of the erstwhile Central Excise Rules 1944 read with Section 38A of the Act *ibid*;
- (iv) Penalty of Rs. 25,00,000/- each were imposed on Shri. T. S. Natarajan (Partner) and Shri. T. N. Kalaimani (Partner) under erstwhile Rule 209A of the Central Excise Rules, 1944 read with Section 38A of the Central Excise Act, 1944;

(v) Penalty of Rs. 2,00,000/- was imposed on Shri. J. Srinivasa Raghavan (Manager) under the same provisions.

2.3 Hence, Appeal No. E/552/2010 was filed by the assessee and Appeal Nos. E/553/2010, E/554/2010 and E/555/2010 were filed by Shri. J. Srinivasa Raghavan, Shri. T. S. Natarajan and Shri. T. N. Kalaimani respectively.

3. Today when the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri. Raghavan Ramabadran made a number of oral and written submissions which can be broadly summarized as under :

▪ **With respect to the dispute concerning usage of Open Air Stenter for drying of fabrics :**

(i) Ld. Advocate drew our attention to Rule 96ZNA of the Central Excise Rules, 1944 which laid down the qualifications of procedure for applying for special procedure available to Independent Textile Processors during the impugned period. He draws our attention to Explanation 1 in particular, wherein the definition of “Independent Textile Processor” has been given to point out that the heat setting or drying would be required to be done only with the aid of “power or steam exclusively in a Hot Air Stenter”;

(ii)Ld. Advocate draws our attention to the Mahazar dated 31.10.2001. The original version in Tamil has been placed in pages 119 to 120 of the Appeal Paper Book and the English translation thereof in pages 121 to 122, to point out that while it has been mentioned in Serial No. 29 that the Open Air Stenter in use was for “heating fabrics and drying”, nowhere in the Mahazar is it forthcoming that the witnesses had in fact witnessed the actual drying of fabrics by the use of the said Open Air Stenter;

(iii) Ld. Advocate drew our attention to the Statement of Shri. J. Srinavasa Raghavan, Manager of the assessee, from page 123 onwards in question and answer form. In question number 3, Shri. J. Srinivasa Raghavan has averred that they have two Open Air Stenters and that they do batching after stentering. Nowhere in the statement has there been any admission that the working Open Air Stenter was used for heat setting or drying of fabrics.

(iv) Ld. Advocate draws our attention to the decision of the Hon’ble High Court of Madras in the case of *Shri. R. Makeswaran Vs. The State Rep. by: The Inspector of Police, Coimbatore Dist. in Crl.O.P. No. 10695 of 2014 & M.P. No. 1*

of 2014 dated 10.09.2015 wherein at paragraph 7, the observations of the Hon'ble Supreme Court in *Yakub Abdul Razak Menon Vs. State of Maharashtra – 2013 (13) S.C.C. 1* have been reproduced by the Hon'ble High Court. Ld. Advocate also drew our attention to the observations in respect of evidential value of panchanama. In paragraph 8, the Hon'ble High Court of Madras has held that a seizure memo is nothing but a corroborative piece of evidence.

▪ **With regard to the dispute concerning value of plant and machinery exceeding Rs. 3 crores :**

- (i) Ld. Advocate drew our attention to paragraph 16.02 of the impugned Order wherein, along with the original investment of plant and machinery of Rs. 1.93 crores declared in their ASP-1 application, value of generator, electrical and mechanical spares and accessories, pollution control equipment and lift totalling to Rs. 1.11 crores has also been taken into account by the adjudicating authority to conclude that the value of plant and machinery exceeds Rs. 3 crores. Ld. Advocate submits that by no stretch of imagination can the value of such items be included in plant and machinery;

(ii) Ld. Advocate also draws our attention to Rule 96ZNB which mandates that value of plant and machinery should not exceed Rs. 3 crores. However, the said provisions relate only to plant and machinery installed in the factory of the Independent Textile Processor.

(iii) Ld. Advocate even drew our attention to the Application in ASP-1 dated 16.05.2001 submitted, seeking Compounded Levy Scheme, wherein they had indicated that a number of equipment at serial numbers 26, 37 and 40 had not been installed. The total value of these uninstalled machines would come to Rs. 16,04,104/-. Hence, even after taking into account the value arrived at by the adjudicating authority, the value of plant and machinery would be below Rs. 3 crores;

(iv) As an alternative plea, Ld. Advocate submits that even if Compounded Levy Scheme would not have been eligible to them, they would still necessarily have to be treated as job worker of M/s. Janson Industries Ltd., in which case, the valuation of processed fabrics would be required to be done as per the law laid down in the case of *M/s. Ujagar Prints Ltd. Vs. Union of India & Ors.- 1989 (39) E.L.T. 493 (S.C.)* by the Hon'ble Apex Court.

(v) Penalty under Rule 11AC ibid is not imposable as the ingredients under that Section are not present in the assessee's case. The only basis in the proceedings for alleging suppression was that the actual value of plant and machinery was not disclosed in their Application dated 16.05.2001 and that the Department had identified other fixed assets, which aspect has been contested right from the stage of Show Cause Notice by the assessee. For this very same reason, since no penalty is imposable on the main assessee, there cannot be any penalty under Rule 209A ibid on the other appellants as well, namely, Shri. J. Srinivasa Raghavan, Shri. T. S. Natarajan and Shri. T. N. Kalaimani.

4. On the other hand, Ld. AR Shri. S. Govindarajan appearing on behalf of the respondent made a number of submissions which can be broadly summarized as under :

▪ **With respect to the dispute concerning usage of Open Air Stenter for drying of fabrics :**

(i) Ld. AR submits that as per the Mahazar, the witnesses had seen that the Open Air Stenter was in operation. Ld. AR further took us through paragraphs 15.01 to 15.02 of the impugned Order to point out that the said Mahazar dated

31.10.2001 was drawn in the presence of Shri. J. Srinivasa Raghavan, Manager, and that the said Mahazar indicated clearly that one of the Open Air Stenters was used for heating or drying of fabrics;

(ii) The adjudicating authority has also clearly held that the Statement of Shri. J. Srinivasa Raghavan on 02.11.2001, stating that Open Air Stenter was not used for heat setting or drying, is only an afterthought and cannot be accepted in view of the observational Mahazar drawn on 31.10.2001.

▪ **With regard to the dispute concerning value of plant and machinery exceeding Rs. 3 crores :**

(i) Ld. AR drew our attention to paragraphs 16.02 to 16.09 of the impugned Order to contend that the balance sheet for the year ending 31.03.2001 certified by the Chartered Accountant had included the generator, electrical and mechanical spares and accessories, pollution control equipment and lift under the category of fixed assets;

(ii) As per the Accounting Standards 10 issued by the ICAI, a fixed asset should include land, building, plant and machinery, vehicles and fittings, goodwill, patents, trademarks and designs. That fixed asset is an asset held with

the intention of being used for the purpose of producing or providing goods;

(iii) Ld. AR submitted that the contention of the assessee that some of the machines were not installed and that the value of machines that were not installed would render the overall value as baseless and that therefore, should not be included in the value, is incorrect since the wordings of Rule 96ZNB requires that value irrespective of whether plant and machinery is in use or not, or is in working condition or not, and will require to be added to the value;

(iv) The Hon'ble High Court of Rajasthan in the case of *M/s. Sulzer Processors Pvt. Ltd. Vs. Commissioner of Central Excise-II – 2010 (254) E.L.T. 559 (Raj.)* has held that the pollution control equipment have to be included in the value of plant and machinery for the purpose of Compounded Levy Scheme;

(v) Ld. AR also submits that the lift in question, used for transportation of raw materials within the factory, will have to be considered as plant and machinery only.

5. In response, Ld. Advocate draws our attention to paragraph 45 of the judgement in the case of *M/s. Sulzer Processors Pvt. Ltd.*

(*supra*) of the Hon'ble Rajasthan High Court relied upon by the Ld. AR to point out that the expression used in Notification No. 32/2001 pertains to plant and machinery *installed* in the factory that is relevant and not the plant and machinery of the processing unit alone.

6. We have heard the rival contentions, perused the documents placed on record and have also gone through the judgements/orders referred to during the course of hearing.

7. Appellant claimed that it was an independent textile processor and applied for compounded levy scheme (CLS) as per Rules 96ZNA to 96ZND of erstwhile CER, 1944 and Notification No.32/2001 – CE (NT) dated 30.04.2001. Appellant opting to pay the duty under the scheme, filed an application under Rule 96ZNA, on 16.05.2001.

8. 96ZNB – Prescribes conditions for availing of special procedure. The first condition to be satisfied is that ‘...THE ORIGINAL VALUE OF INVESTMENT IN PLANT & MACHNERY INSTALLED IN THE FACTORY...” **as on** 01.03.2001..... shall not exceed INR 3 crores irrespective of such plant and machinery in working condition or not;

9. The second question is, includibility of value of Generator, Lift, etc., which according to the assessee, are not plant and machinery and the same are to be excluded for determining value of plant and machinery as required under 96ZNB. The Revenue, on the other hand, goes by the balance sheet as on 31.01.2001 and includes the value of the above items. The significance is that, if included, the investment would cross 3 crore of rupees and thus, the condition per 96ZNB remains unsatisfied. Notification No.41/2001 dated 21.09.2001 clarifies the computation of value of plant and machinery in the manner prescribed by the institute as per ACCOUNTING STANDARD – 10.

10. Salient features of AS-10 some of which are relevant for the case on hand, its applicability on the facts of this case and our Analysis, are as under :

DEFINITIONS

6. The following terms are used in this Standard with the meanings specified:

.....

Property, plant and equipment are tangible items that:

(a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and

(b) are expected to be used during more than a period of twelve months.

Analysis : - Nowhere it is mentioned about items used or restricted to, production alone;

Recognition

7. The cost of an item of property, plant and equipment should be recognised as an asset if, and only if:

(a) it is probable that future economic benefits associated with the item will flow to the enterprise; and

(b) the cost of the item can be measured reliably.

Analysis : -No one can deny the usage of a generator or a lift and the value (economic benefit) in Asset schedule, as long as the same are derecognised/termed Non-performing, or written off. The same having not specifically written off, they continue to be recognised as item of property, plant and equipment;

8. Items such as spare parts, stand-by equipment and servicing equipment are recognised in accordance with this Standard when they meet the definition of property, plant and equipment.

Otherwise, such items are classified as inventory.

Analysis : -Very clear, to include spare parts as well;

10. An enterprise evaluates under this recognition principle all its costs on property, plant and equipment at the time they are incurred.

These costs include costs incurred: (a) initially to acquire or construct an item of property, plant and equipment; and (b) subsequently to add to, replace part of, or service it.

Analysis : -The assessee cannot deny that the disputed items such as generator, lift, etc. together constitute property, plant and equipment, which continue to be part of its B/S and which are also part of its asset schedule right from the first/initial year.

Initial Costs

*11. The definition of 'property, plant and equipment' covers tangible items which are held for use or for administrative purposes. The term 'administrative purposes' has been used in wider sense to include all business purposes **other than** production or supply of goods or services or for rental for others. Thus, property, plant and equipment would include assets used for selling and distribution, finance and accounting, personnel and other functions of an enterprise. Items of property, plant and equipment **may also be acquired for safety or***

***environmental reasons.** The acquisition of such property, plant and equipment, although not directly increasing the future economic benefits of any particular existing item of property, plant and equipment, may be necessary for an enterprise to obtain the future economic benefits from its other assets. Such items of property, plant and equipment qualify for recognition as assets because they enable an enterprise to derive future economic benefits from related assets in excess of what could be derived had those items not been acquired. For example, a chemical manufacturer may install new chemical handling processes to comply with **environmental requirements** for the production and storage of dangerous chemicals; related plant enhancements are recognised as an asset because without them the enterprise is unable to manufacture and sell chemicals. The resulting carrying amount of such an asset and related assets is reviewed for impairment in accordance with AS 28, Impairment of Assets.*

(emphasised in bold, for clarity)

Analysis : -This covers a whole lot of items, as it is mentioned in the first few lines, like *tangible items which are held for use or for administrative purposes. The term 'administrative purposes' has been used in wider sense to include all business purposes **other than** production or supply of goods or services or for rental for others....* It

is too wide in its ambit, to include every other item/s excluding the ones used for production or supply. It clearly indicates that the items need not have any bearing, even remotely, with the activity of production or got anything to do with performance or capacity or enhancing either performance or capacity. When the above clause even covers items acquired for environmental reasons, the argument that *it was not for performance or capacity or enhancing either performance or capacity*, falls flat.

Subsequent Costs

12. *Under the recognition principle in paragraph 7, an enterprise does not recognise in the carrying amount of an item of property, plant and equipment the costs of the day-to-day servicing of the item. Rather, these costs are recognised in the statement of profit and loss as incurred. Costs of day-to-day servicing are primarily the costs of labour and consumables, and may include the cost of small parts. The purpose of such expenditures is often described as for the 'repairs and maintenance' of the item of property, plant and equipment.*

Analysis : -Here it requires the inclusion of cost of small parts
 – perhaps meant spare parts since it refers to both consumables and small parts.

*13. Parts of some items of property, plant and equipment may require replacement at regular intervals. For example, a furnace may require relining after a specified number of hours of use, or aircraft interiors such as seats and galleys may require replacement several times during the life of the airframe. **Similarly, major parts of conveyor system, such as, conveyor belts, wire ropes, etc., may require replacement several times during the life of the conveyor system. Items of property, plant and equipment may also be acquired to make a less frequently recurring replacement, such as replacing the interior walls of a building, or to make a non-recurring replacement.** Under the recognition principle in paragraph 7, an enterprise recognises in the carrying amount of an item of property, plant and equipment the cost of replacing part of such an item when that cost is incurred if the recognition criteria are met. The carrying amount of those parts that are replaced is derecognised in accordance with the derecognition provisions of this Standard (see paragraphs 74-80).*

(emphasised in bold, for clarity)

Analysis : -Some of the items above include spares/spare parts of conveyor belt, wipe ropes, interior walls of a building, requiring replacement at regular intervals; and still they are included as part of PROPERTY, PLANT AND EQUIPMENT.

..

20. Examples of costs that are not costs of an item of property, plant and equipment are: (a) costs of opening a new facility or business, such as, inauguration costs; (b) costs of introducing a new product or service (including costs of advertising and promotional activities); (c) costs of conducting business in a new location or with a new class of customer (including costs of staff training); and (d) administration and other general overhead costs.

Analysis : -Only a few of the above class/s are not the costs of an item of property, plant and equipment and the same doesn't cover other classes. Typically, the above costs are in the revenue field with no impact on the balance sheet.

...

...

40. A class of property, plant and equipment is a grouping of assets of a similar nature and use in operations of an enterprise. The following are examples of separate classes: (a) land; (b) land and

buildings; (c) machinery; (d) ships; (e) aircraft; (f) motor vehicles; (g) furniture and fixtures; (h) office equipment; and (i) bearer plants.

Analysis : - This talks of property, plant and equipment, to be grouped in respective asset groups based on its nature and use. Interesting to note that irrespective of whether an item is machinery or a fixture or office equipment, should form part of respective group **under property, plant and equipment**; This also indicates and counters the argument of the appellant that 'lift' is only a 'building', to say that land and building also form a class of property, plant and equipment, of the bigger class of assets

....

Derecognition

74. The carrying amount of an item of property, plant and equipment should be derecognised (a) on disposal; or (b) when no future economic benefits are expected from its use or disposal.

Analysis : -No one has any choice in opting for a certain items to be included or to be excluded. Only way out is its derecognition. Once derecognised, other modalities prescribed in Paragraphs 75-79 of the AS-10 would apply.

11. Going by the above, i.e., the conditions to be satisfied and our observations regarding compliance by the appellants in the present cases, we find it difficult to accept the plea that value to be included are those which are used in mere production/used only in increasing the capacity. For the above reasons and our analysis, we have to hold that the appellant has failed to satisfy the first condition of S.96ZNB inasmuch as, they have failed in clearing the very first hurdle of initial investment over and above the threshold limit prescribed thereunder.

12. Now coming to the first question of eligibility to file application under 96ZNA, the case of the appellant is that it having not used open air stenter in heat-setting and drying of fabrics, but the process of heat-setting and drying was done exclusively done by through hot-air stenter; that by this it satisfied the first condition under S.96ZNA and that mere availability of open-air stenter was not a ground to presume that the same was used for execution of impugned processes, become academic. As noted in the earlier paragraphs, 96ZNA prescribes certain criteria for filing the application whereas, 96ZNB prescribes conditions for availing of special procedure. Hence, in the background of our findings that

here in the case on hand and the facts of this case, the appellant has not got through in its first hurdle as far as threshold investment limit is concerned, thus the mere application filed under 96ZNA *per se* will not confer any benefit, much less of the kind sought for by the appellant herein.

13. From the facts on record, what comes to the fore is that the Show Cause Notice has categorized the clearances into three types.

14.1.1 Type 1 concerns valuation of fabrics cleared on job work basis to M/s. Jansons Industries Ltd. who, in turn, use the processed fabrics to manufacture dhotis, etc. The Department has taken the view that valuation requires to be adopted at 115% of the cost of production. What cannot be dispute is that the appellant was only doing a job work on materials provided by their principals. In this regard, we find merit in the contention of the appellants that in such cases, the method of valuation laid down in *M/s. Ujagar Prints Ltd. (supra)* and reiterated in *M/s. Pawan Biscuits Co. (Pvt.) Ltd. Vs. Collector of Central Excise, Patna - 2000 (120) E.L.T. 24 (S.C.)* will necessarily have to be followed, in which case, the value to be adopted will be restricted to the material cost of job work charges. There cannot then be any question of adding the profit of the principals.

14.1.2 We also find that the appellants have correctly relied upon Board Circular No. 619/10/2002-CX dated 19.02.2002, the relevant portion of which is reproduced as under :

*“2. The matter has been examined by the Board. It is observed that the system of getting goods manufactured on job-work basis is not new. Under the provisions of the earlier Section 4 and Rules made there under the matter has been finally decided by the Apex Court in the case of Ujagar Prints Ltd. [1989 (39) E.L.T. 493 (S.C.)] and the case of Pawan Biscuits Co. Pvt. Ltd. [2000 (120) E.L.T. 24 (S.C.)]. It was clearly held that in respect of goods manufactured on job-work basis, assessable value would be the job charges (including the profit of the job-worker if not already included in the job charges) plus the cost of the materials used in the manufacture of the item (including the cost of the materials supplied free of cost to the job-worker). **The assessable value in such cases will not include the profit or the expenses (like advertisement and publicity, overheads, etc.) incurred by the buyer (or the supplier of the raw materials), where the dealing between the two are on principal to principal basis.** The mere fact that the buyer is supplying some raw materials free of cost to the job-worker will not be sufficient ground to contend that the dealings between the two are not at arm’s length. Goods manufactured on job-work were earlier assessed under the residuary Rule 7 of the erstwhile Valuation Rules of 1975 read with Rule 6(b) read with the Apex Court decisions referred to above.*

*3. Under the new valuation provisions, introduced with effect from 1-7-2000, there is no departure from the principles laid down by the Apex Court in the above two decisions, in respect of goods manufactured on job-work basis. In other words, goods manufactured on job-work basis after 1-7-2000 will continue to be valued in the same manner as they were being valued before 1-7-2000. **In other words, after 1-7-2000, in respect of goods manufactured on job-work basis, valuation would be governed by Rule 11 of the new valuation Rules of 2000 read with the above two decisions of the Apex Court.***

No differential duty is payable on the goods sent for export...”

14.2 The second type of clearance on which duty has been demanded relates to the processed goods sent via appellant to M/s. Jansons Exports. There is no dispute that such processed goods were sent on payment of compounded duty and thereafter exported. We are therefore in agreement with the submission of the

appellant that for this reason, there cannot be any demand of differential duty.

14.3.1 The third type of clearance alluded to in the Show Cause Notice concerns goods processed and cleared to independent customers on job work basis. The appellant has argued that the differential duty is calculated here also by deducting the compounded levy from the value shown in the invoice. It is also argued that the valuation method imposed by the Department is without any legal basis and that the valuation should be under the ratio laid down by the Hon'ble Apex Court in the case of *M/s. Ujagar Prints Ltd. (supra)*.

14.3.2 In the grounds of appeal, the appellants have contended that no findings have been given by the adjudicating authority with regard to the detailed submissions made on this aspect by the appellant in their reply to the Notice. It is also brought out that in the reply to the Show Cause Notice, they had submitted a revised quantification of demand, as per which the duty payable is only Rs. 68,65,550/-. We find the revised quantification claim by the appellant in page 185 of the Appeal Paper Book, as under :

“
2001-2002
 (01.05.2001 to 28.02.2002)

I. COTTON FABRICS

1. COTTON FABRICS VALUE AS PER SCN W/S } 14,68,13,815.00 x 100 ÷ 116
FOR HOME CONSUMPTION CLEARANCE }
2. ACTUAL ASSESSABLE VALUE UNDER CUM } 12,65,63,634.00 x 12% ADV
DUTY (Dee. Cre. For 2001-2002 is 25% Aggregate}
of BED & AED (GSI)
3. DUTY PAYABLE FOR THAT VALUE LESS } 1,51,87,636.00
DEEMED CREDIT AT 25% }

II. MANMADE FABRICS

1. MANMADE FABRICS VALUE AS PER SCN W/S } 3,34,46,736.00 x 100 ÷ 116
FOR HOME CONSUMPTION CLEARANCE }
2. ACTUAL ASSESSABLE VALUE UNDER CUM } 2,88,33,393.00 x 8% ADV
DUTY (Dee. Cre. For 2001-2002 is 50% Aggregate }
of BED & AED (GSI)
3. DUTY PAYABLE FOR THAT VALUE LESS } 23,06,671.00
DEEMED CREDIT AT 50% }

III. TERRY TOWELLING FABRICS

1. T. TOWELLING FABRICS VALUE AS PER SCN } 12,02,565.00 x 100 ÷ 116
W/S FOR HOME CONSUMPTION CLEARANCE }
2. ACTUAL ASSESSABLE VALUE UNDER CUM } 10,36,694.00 x 12% ADV
DUTY (Dee. Cre. For 2001-2002 is 25% Aggregate }
of BED & AED (GSI)
3. DUTY PAYABLE FOR THAT VALUE LESS } 1,24,403.00
DEEMED CREDIT AT 25% }

DUTY PAYABLE FOR :

(i) C.F.P.	Rs. 1,51,87,636.00
(ii) M.M.F.	Rs. 23,06,671.00
(iii) T.T.F.	Rs. 1,24,403.00
	Rs. 1,76,18,710.00
DUTY ALREADY PAID	RS. 1,07,53,160.00
DIFFERENTIAL DUTY DUE }	
TO BE PAID }	Rs. 68,65,550.00

NOTE: THERE WILL BE NO DUTY LIABILITY FOR THE GOODS CLEARED FOR EXPORT AND REMOVED UNDER RULE 13(1)(b) CHALLAN MOVEMENT.”

In the circumstances, there is a definite case for re-consideration of the quantum of demand in this case.

15. The matter is therefore remanded to the adjudicating authority for the limited purpose of taking into account the submissions made by the Ld. Advocate for the appellants summarized in paragraph 3 *supra* as also the revised quantification submitted by them as reproduced in paragraph 14.3.2 *supra*.

16.1 Coming to penalty, we find that the proceedings have been initiated and the disputed demands confirmed only due to differences in interpretation of the provisions of the compounded levy scheme provided in Rule 96ZNA and 96ZNB of the erstwhile Central Excise Rules, 1944 and Notification No. 32/2001-CE (NT) dated 30.04.2001. Even as of now, the appellants are still disputing the manner and method of quantification of duty liability and have argued, as discussed *supra*, that the demand should only be to the extent of Rs. 68,65,550/- against the confirmed demand of Rs. 2,17,05,582/-.

16.2 We also find merit in the argument of the Ld. Advocate for the appellants that the only basis for alleging suppression is that actual value of plant and machinery was not disclosed in their application dated 16.05.2001 and that the Department identified 'other fixed assets' from the appellant's balance sheet as on 31.03.2001. The appellants have averred that the very same balance sheet was

submitted by them along with the application, as recorded in paragraph 7.05 of the Order-in-Original.

17. In the circumstances, we are of the considered opinion that no suppression can be assailed against the appellant. In consequence, we hold that the penalty of Rs. 2,17,05,582/- under Section 11AC of the Central Excise Act, 1944 and Rule 173Q of the erstwhile Central Excise Rules, 1944 read with Section 38A of the Act *ibid* cannot be sustained and is therefore set aside.

18. For the above reasons, Appeal No. E/552/2010 (M/s. Jansons Textile Processors) is partly remanded for the limited purpose of re-quantification of net duty liability in the light of our observations and directions hereinabove. The imposition of penalty of Rs. 2,17,05,582/- under Section 11AC is set aside.

19. We now proceed to take up the matter of the penalties imposed on Shri. T. S. Natarajan, Shri. T. N. Kalaimani and Shri. J. Srinivasa Raghavan.

20.1 From the Show Cause Notice dated 06.06.2002, the proposal for imposition of penalty is found in paragraph 44. The Show Cause Notice has proposed imposition of penalty under Rule 209A of the Central Excise Rules, 1944 read with Rule 26 of the Central Excise Rules, 2001 on these persons - Shri. T.S. Natarajan and Shri. T.N.

Kalaimani, partner of M/s. JTP and Shri. J. Srinivasa Raghavan, Authorized Signatory of M/s. JTP on the grounds that they have suppressed their “proprietary interest” in M/s. Jansons Industries Ltd. and M/s. Sengunthar Mills (P) Ltd.; that thus they have apparently suppressed the value of original investment made in the plant and machinery installed in M/s. JTP, suppressed processing of fabrics in open air stenter installed in M/s. JTP, have intentionally claimed ineligible benefit under Notification No. 16/2001-CE dated 30.04.2001.

20.2 The basis for this proposition can be traced to paragraphs 17 and 18 of the Notice, wherein *inter alia* it is alleged that M/s. JTP have “proprietary interest” in M/s. Sengunthar Mills Pvt. Ltd. by way of holding 3780 shares of Rs. 100 each, *inter alia*, 1175 shares by Shri. T.S. Natarajan, 1000 shares by Shri. T.N. Kalaimani, 1025 shares by Shri. T.N. Thirukumar (son of Shri. T.S. Natarajan) and 580 shares by Smt. Padmavati (wife of Shri. T.S. Natarajan).

20.3 Paragraph 20 alleges that “proprietary interest” of M/s. JTP is represented by partners Shri. T.S. Natarajan and Shri. T.N. Kalaimani in M/s. Janson Industries Ltd. It is however not clear from the Notice as to why only two of the partners of M/s. JTP have

been saddled with the allegation of having proprietary interest in M/s. Janson Industries/Sengunthar Mills Pvt. Ltd.

20.4 Further, it is not forthcoming from the Notice as to whether any statements have been recorded from Shri. T.S. Natarajan or Shri. T.N.Kalaimani. There is only an indication of the statements recorded from 02.11.2001 to 27.02.2002 from Shri. J. Srinivasa Raghavan authorized signatory of M/s. JTP wherein he has not made any such admissions regarding proprietary interest.

21.1 While the findings and decisions in the impugned Order span around 13 to 14 pages, there is no discussion with regard to the allegations made against these three persons that they have actively connived or conspired to facilitate the “proprietary interest” aspect alleged by the Department.

21.2 The only discussion remains in paragraph 21.01 wherein the only finding against Shri. T.S.Natarajan and Shri. T.N.Kalaimani are that “being partners of the above firm, cannot disown their responsibility in giving false declaration to the Department”. It is also alleged that the partners are at the helm of affairs of management of the firm and are directly responsible for the omission and commission in this case, leading to loss of revenue to

Government. This is as bald and presumptive as a conclusion can be.

21.3 The finding against Shri. J. Srinivasa Raghavan is that he was the authorized signatory and “has failed to furnish the details regarding the value of plant and machinery as conforming to the Accounting Standards 10 issued by the Institute of Chartered Accountants of India as promised by him.” This conclusion is being made in spite of the very clear averment made in the statement of Shri. J. Srinivasa Raghavan recorded on 27.02.2002 that the reasons for non-inclusion of certain equipment/machinery in the ASP was not known to him and that he did not know the quantum of investment made by M/s. JTP on pollution control equipment. It is not at all just or fair to implicate the authorized signatory and hold him responsible only because he professed total ignorance of the goings-on with respect to investment in plant and machinery.

22. In the circumstances, we find that no acceptable grounds or reasons have been discussed, analysed or concluded by the adjudicating authority towards imposing the penalties on these three persons, that too of such huge quantum viz., Rs. 25,00,000/- on Shri. T.S. Natarajan and Shri. T.N. Kalaimani and Rs. 2,00,000/- on Shri. J. Srinivasa Raghavan under Rule 209A *ibid* and Section 38A

ibid. We do not find any justification for these penalties. This being so, that part of the Order which imposes these penalties cannot be sustained and will require to be set aside, which we hereby do. We however make it clear that we do not interfere with any other part of the impugned Order.

23. Appeal Nos. E/553/2010 (Shri. J. Srinivasa Raghavan), E/554/2010 (Shri. T.S. Natarajan) and E/555/2010 (Shri. T.N. Kalaimani) are therefore allowed *in toto*.

24. To sum up : -

▪ **In respect of Appeal No. E/552/2010 :**

(a) The appeal is partly remanded for the limited purpose of re-quantification of the net duty liability in the light of our observations and directions hereinabove.

(b) The imposition of penalty of Rs. 2,17,05,582/- under Section 11AC *ibid* read with Rule 173Q of the erstwhile Central Excise Rules, 1944 read with Section 38A of the Central Excise Act, 1944 is set aside. The appeal on this score is allowed.

- In respect of Appeal Nos. E/553/2010, E/554/2010 and E/555/2010 :

(a) The penalties imposed under Rule 209A of the Central Excise Rules, 1944 read with Section 38A ibid on Shri. T.S. Natarajan, Shri. T.N. Kalaimani and Shri. J. Srinivasa Raghavan are set aside. The appeals against the penalties imposed on these persons are allowed.

19. The appeals are disposed of on above terms.

(Pronounced in open court on 11.03.2019)

(P Dinesha)
Member (Judicial)
Sdd

(Madhu Mohan Damodhar)
Member (Technical)