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

E/376/2006, E/319/2006 & E/345/2006

(Arising out of Order-in-Original No. 8/2006 dated 30.01.2006 passed by the Commissioner of Central Excise, Commissionerate-II, Chennai).

1. M/s. Sivagurunathan Textiles Ltd. : Appellants
2. Shri V. Ramakrishnan
3. Shri E.L. Gunasekar

Vs.

CCE, Chennai –II : Respondent

Appearance

Shri T. Ramesh, Advocate
For the appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the respondent

CORAM

Hon'ble Shri D.N.PANDA, Judicial Member
Hon'ble Shri MADHU MOHAN DAMODHAR, Technical Member

Date of Hearing: 11.01.2017

Date of Pronouncement: 24.03.2017

FINAL ORDER Nos. 40539 – 40541/2017

Per: Madhu Mohan Damodhar

The facts of the case are that M/s. Sivagurunathan Textiles Ltd., the first named appellant (hereinafter referred to as STL) are the manufacturers of cotton yarn and polyester yarn. M/s. STL were availing exemption in terms of the Notification Nos. 5/99-CE dated 28.02.1999, 6/2000-CE dated 01.03.2000 and 3/2001-CE dated 01.03.2001 as amended and purportedly cleared cotton yarn without payment of duty to their job workers for conversion into hank yarn in plain (straight) reel hanks. As per their records, STL received back the yarn after such conversion and accounted them in its RG-1 register and then sold the same under their invoices as PR hanks without payment of duty. For the removal of cotton yarn and for the receipt of hank yarn, STL were following the procedure prescribed under Rule 96E of the erstwhile Central Excise Rules, 1944 (hereinafter referred to as 1944 Rules), and Rule 20 of the erstwhile Central Excise (No.2) Rules, 2001 (hereinafter referred to as 2001 Rules). In terms of the said Rules, cotton yarn can be cleared (in cheese form or in cop form) to a place outside the factory of production without payment of duty for conversion into plain reel hanks. The goods, after such conversion, can be returned to the factory of production for further use in the manufacture of excisable goods or can be cleared from the job workers premises under proper central excise invoices.

2. Central Excise Officers conducted surprise checks at the factory premises of STL on 21.09.2001 and verified stock and accounts in the presence of Shri N. Subramanian, Deputy General Manager of the said factory. The details of stock as per books, physical stock and the discrepancy noticed during the said stock taking were recorded under a Mahazar dated 21.09.2001 on the spot and the discrepancies noticed in stock were as follows:-

Sl.No	Description of goods	Stock as per RG-1 **Qty in kgs**	Physical stock **Qty in kgs**	Shortage in stock **Qty in kgs**
1	10s Cotton yarn	15374	2580	12794
2	10s Cotton hank yarn	37716	NIL	37716
3	60s 100% Polyster yarn	17580	NIL	17580
4	45s Polyester yarn	9444.3	NIL	9444.3

Total duty payable on the excisable goods so found short was worked out as Rs. 10,42,361/- towards which STL paid Rs.3,25,050/-. It subsequently emerged that despite recording of facts in the mahazar dated 21.09.2001 that the last invoices issued by STL dated 20.09.2001 was invoice No. 265 dated 20.09.2001, STL had raised invoices Nos. 266-269 dated 20.09.2001 subsequently, purportedly to show that goods therein were transported in vehicle Nos. TN-32-2667, TAL-6604, TAN-7844 and TN-04-2995. However, evidences gathered from the lorry arrangers for the above said lorries appeared to indicate that the so called despatches of hank yarn were bogus. It further appeared that STL had diverted cheese yarn which were purported to be cleared for job work conversion, to local market with the connivance of job workers and evade payment of duty. It further appeared that STL had mis-declared the stock position in their stock account, monthly R.T. 12 returns and financial accounts etc. and had indulged in clandestine removal of excisable goods without payment of duty.

3. From further investigations, it emerged that STL with the connivance of the said job-workers had fabricated documents to

show as if the said yarn were converted and returned to STL. STL had also raised bogus documents like invoices and L.Rs to show sale of hank yarn from the factory of STL without actual conversion and receipt of such hank yarn. In other words, for the clearances of yarn in cheeses, STL had fabricated bogus invoices showing clearance of plain reel hank yarn and thus evaded duty. On the basis of these investigations, a SCN dated 18.05.2004 was issued to STL alleging duty evasion amounting to Rs. 84,46,815/- during the period from January 2000 to March 2002 as follows:

Annex. to SCN	**Description**	**B.E.D**	**AED (T& TA)**	**TOTAL**
I	Duty on shortages	906401	135960	1042361
II	Duty on cotton yarn removed to M/s. RR Reeling Unit-II	3845394	576808	4422202
III	Duty on Cotton yarn removed to M/s. Bannari Amman Reeling unit	2356383	353457	2709840
IV	Duty on cotton yarn removed to Sankar Tex, Thiruchengode	236990	35532	272412
	TOTAL	**7345058**	**1101757**	**8446815**

The said SCN dated 18.05.2004 accordingly proposed demand from STL of the aforesaid duty liabilities thereon and imposition of penalties on them under Section 11 AC of the CEA, 1944 and under erstwhile Rule 173Q/Rule 25 of Central Excise Rules. The SCN also proposed imposition of penalties under erstwhile Rule 209A/Rule 26 of the Rules on Shri E.L. Gunasekar, Proprietor of M/s. Bannari Amman Reeling Unit and M/s. Sri Dhanalakshmi Yarn Agencies,

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Erode, and Shri V. Ramakrishnan, Proprietor of M/s. R.R. Reeling Unit, Erode.

4. After due process of adjudication, the Commissioner of Central Excise, Chennai-II Commissionerate, vide order dated 30.01.2006 (impugned order) confirmed the demands proposed in Annexures I, II and III of the SCN, totalling to Rs. 75,73,534/-, dropped proceedings in respect of demand proposed in Annexure IV of the SCN, and also imposed the following penalties:

a) Penalty of **Rs. 75,73,534/-** on M/s. STL under Section 11 AC of the Central Excise Act, 1944

b) Penalty of **Rs. 15,00,000/-** on M/s. STL under Rule 25 of the erstwhile Central Excise (No.2) Rules, 2001.

c) Penalty of **Rs. 2,00,000/-** on Shri V.Ramakrishnan, Proprietor of M/s. R.R. Reeling Unit, Erode

d) Penalty of **Rs.1,00,000/-** on Shri E.L. Gunasekar, Proprietor of M/s. Bannari Amman Reeling Unit and Sri Dhanalakshmi Yarn Agencies under Rule 209A of CER,1944 and under Rule 26 of CE (No.2) Rules, 2001.

Aggrieved, these three appellants are before this forum.

5. Hearing of these appeals was held on 16.11.2016, on which day, the submissions of ld. Counsel Shri T. Ramesh were recorded in the proceedings as follows:

"Opening the argument, learned counsel says that on two counts the demand was made in the adjudication. The first count of demand related to document and description under Annexure-I to the show cause notice which emanated from para3.1 thereof depicting a table showing the discrepancy found during physical verification. The second count of demand arose in respect of Annexure-II and III of the show cause notice.

2. So far as Annexure –II is concerned, duty liability was calculated on cotton yarn removed to M/s. RR. Reeling unit-II. Demand of duty arose out of the duty leviable on the cotton yarn removed to M/s. Bannari Amman Reeling Unit.

3. So far as RR. Reeling Unit-II and Bannari Amman Reeling Unit are concerned, the allegation is depicted in para 9.1 of the show cause notice. Ultimately under para 11, a Table has been drawn raising demand on 4 Annexures but no demand sustains on Annexure-4. Therefore, demand raised on 3 Annexures is under dispute. Ld. Counsel says that the controversy is on reeled hank yarn and that was resolved by Board Circulars."

6. On 11.01.2017 when the matter came up for hearing, ld. Counsel Shri T. Ramesh reiterated the grounds of appeal and also filed written submissions. Main contentions of STL can be summarized as follows:-

a) The goods were cleared by availing the benefit of exemption Notification No. 5/1999, as amended by Notification No. 6/2000 and 3/2001 dated 01.03.2001. The department had full knowledge about the clearing of the goods to the above job working units for converting the cheese yarn into hank yarn and also about the availment of benefit of the above said notification. AR 3A forms are also duly verified by the officials. The appellants had also filed the periodical returns along with statutory documents like AR 3A, invoices, delivery challans and D3 intimations.

b) Though initially some statements were made by R.R. Reeling Unit (RRR Unit)that they have done conversion to hank yarn, in the cross examination it was stated that they had done so. As far as the statement of M/s. Bannari Amman unit (BA Unit) is concerned, appellant has categorically stated that he has converted the goods received from M/s. STL into hank yarn in the ratio of 70:30. In the cross examination he has also stated that he had the Diesel Engines to carry out conversion process and some of the goods were cleared as such in cheese form to the hank yarn conversion to other customers.

c) Show cause notice dated 18.05.2004 was issued 18 months after the date of the visit of the officials,.

d) The entire demand is confirmed by denying the benefit of exemption merely on the ground of procedural lapse. The adjudicating authority went only with regard to the allegations in the show cause notice and did not consider the statements recorded during the cross examination.

e) Appellant produced all the evidences for the supply of goods to the job working units for the conversion into hank yarn and such job working units intimated the receipts, verified by the central excise officers and acknowledged the receipt by job working unit and such job working units have also produced the accounts with regard to the conversion process.

f) The clearances are exempted by virtue of 11C Notification and the Board Circular. As per 11C Notification, the major portions of the clearances are covered upto 1st July, 2001. As per the Board's Circular, for the entire period goods of duty cannot be demanded for any reason. Admittedly, the present case the goods were cleared by following 96E procedure for conversion into hank yarn. Departmental officials have verified the clearances and thus had the full knowledge about the transaction carried out during the disputed period and therefore, the appellant is entitled for the benefit of notification under Section 5A as well as 11C Notification.

g) The entire demand is barred by limitation. There is no suppression in the present case in as much as in both the ends the departmental officials have verified both the supply of the goods by STL and the receipt of the goods by job working units.

h) The demand on 30s cotton is beyond the scope of the investigation and no verification conducted during the visit of the officials. Further, the shortage alleged is very miniscule portion of the total production over the period of time, the shortage may be due to pilferage. Hence, the demand on shortage of goods is not sustainable.

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7. On the other hand, on behalf of the Revenue, ld. AR Shri K. Veerabhadra Reddy, JC, supports the adjudication, In further written submissions submitted by Revenue, the following main arguments have been put forth:

a) As regards the contention of the appellant that it is a case of procedural lapse, investigation has demonstrated from the RG1 register that there was a balance quantity of 62425 kgs. of 30s cotton yarn and whereas there was no physical stock of 30s cotton yarn available on the date of visit.

b) Shri V. Ramakrishnan, Proprietor of R.R. Reeling Unit-II, in his statement dated 13.10.2001 has inter-alia stated that he has not converted cotton yarn into hank yarn for the appellant; that he has prepared AR34 and invoice and sent to STL without actual conversion for a consideration of Rs. 0.25 per kg. The above fact has been corroborated by Shri S. Nainar, Director. Further, the appellant has not submitted any lorry receipts showing movement of cotton yarn/hank yarn. The cross examination of Shri V. Ramakrishnan was considered and discarded (Ref. to 23.1 & 23.2 of O-in-O).

c) Verification at BA unit and statement of Shri E.L. Gunasekar, Proprietor, has revealed that he has prepared documents as if hank yarn was manufactured in his unit, whereas only 70% of the cones received from STL was converted into hank yarn and the balance 30% was not at all received. The 70% converted into hank yarn was not sent to STL but was sold locally and the documents were sent to STL through courier.

The above facts were reiterated during cross examination on 19.10.2005. Further no lorry receipts were available showing movement of hank yarn.

d) Verification of buyers' premises, Siva Traders, Erode revealed there is no such company at the declared address.

e) In the light of shortages found at the job worker premises, verification conducted at a various job workers and buyers of hank yarn (who are found to be fictitious) and in the absence of evidence of lorry receipts indicating cone yarn/hank yarn movement by the appellant, the extended period is rightly invokable and the demand is sustainable on extended period.

8. Heard both sides and gone through the records.

9. Only the demands raised in **Annexures I, II and III of the SCN** are presently under dispute. We intend to analyse each of them in detail.

10.1 In **<u>Annexure-I,</u>** the demand emanates on shortages in physical stock of finished goods found at the factory premises of STL on the day of visit of the departmental officers on 21.09.2001. It is pertinent to note that the mahazar was drawn by the officers on 21.09.2001 in the presence of Shri N. Subramanian, Deputy General Manager of STL, verifying the physical stock available and the discrepancy of shortage noticed. It is also been recorded in the mahazar that the last invoice issued by STL was invoice No. 265 dated 20.09.2001. However, STL had raised invoice Nos. 266-269 subsequently claiming that they too had been issued on

20.09.2001. When this controversy emerged, statement of one Kum. Malarvizhi, working as Clerk in STL was recorded on 26.09.2001 admitting that no lorries had been booked and no LRs had been prepared for the invoice Nos. 266-269. Investigation also revealed that the vehicle numbers mentioned in the invoices were fictitious. Evidences gathered from the lorry arrangers for the said lorries also showed that the so called despatches of hank yarn vide the above invoices were bogus. There it comes to the fore that STL had issued these invoice Nos. 266-269 post-facto, after the date of the visit of the officers only to camouflage and to justify the shortages found in respect of hank yarn. Interestingly, neither in grounds of appeal nor in the written submissions filed on 26/12/2016, have the appellants disputed the fact of shortages and discrepancies in respect of physical stock of finished gods that have been recorded in the mahazar on the date of visit of the officers. The only contention put forth by the appellant is that during physical verification of stock only shortage of 10s cotton yarn was found, however, SCN had demanded duty on 30s cotton yarn also. Alternate plea in this regard is that, shortage may be due to pilferage of yarn over a period of time. We are unable to accept these arguments. The adjudicating authority has clearly explained that while on the day of visit, there was only one variety of yarn ie. 10s cotton physically available; however, in respect of other three varieties of yarn though they were not available for physical verification but there were entries showing balance of stock for the month of 09/2001 in the RG-1 register, hence stock was verified and recorded in the mahazar only in respect of those four varieties of yarn.

10.2. In respect of 30s cotton yarn, as there was neither physical stock or entries in RG-1 register, hence, stock thereof was not verified on 21.09.2001 and not obviously recorded in the mahazar also. Only on subsequent verification of records, it was found that a balance of stock of 62425 kgs of 30s cotton yarn as per folio No. 20 of RG-1 register was found which was not updated for subsequent months of July and August, 2001. Kum. Malarvizhi, Clerk of STL in her statement dated 26.09.2001, admitted the shortage of 62425 kgs of 30s cotton yarn and attributed to over sight for not carrying over it on the books of stock. The said shortage of 30s cotton yarn in addition to the shortages recorded in the mahazar dated 21.09.2001 was also admitted by Shri N. Nainar, Director of STL. This being so, the aforesaid contentions of STL in this matter do not carry any merit. Their claim of shortages as attributable to pilferage also does not appeal to common sense since, no prudent business entity would turn a blind eye to shortages of yarn as much as 142539 Kgs, approximating to 143 metric tons of yarn from the premises. In the event, were are of the considered opinion that the demand of Rs. 10,42,361/- made against STL on account of the aforesaid shortages will necessarily sustain.

11.1 In **Annexure-II**, demand raised pertains to duty on cotton yarn allegedly cleared by STL to M/s. RR Reeling Unit-II for conversion into hank yarn but diverted to Erode market without being converted into hank yarn. Ld. Counsel has contended that notwithstanding the earlier statements made by the Proprietor of M/s. RR Reeling Unit-II, admitting that they have not converted cotton yarn into hank yarn, in cross-examination they have confirmed the fact of such conversion. Appellant also contends that goods were sent under cover of duly authenticated AR-3A forms to RR Reeling Unit-II, who in turn filed D-3 intimation with the jurisdictional Central Excise Range officers. It is also been submitted that non receipt of goods by STL after conversion cannot be received to hold that the entire transaction was only on paper. In this regard, it is noted that when the officers visited the factory premises of M/s. RR Reeling Unit-II, it was noticed that 9 nos. of one side reeling machines and 2 nos. of double side reeling machines were in a dismantled condition. The proprietor of M/s. RR Reeling Unit-II, Shri V. Ramakrishnan had then deposed that they had **not** received **any** cotton yarn from STL and **not** done any conversion (reeling of cotton yarn into hank yarn) in the premises, and also admitted that on request from STL, records have been fabricated to show as if reeling was done in his factory and the converted hank yarn had been sent back to STL. It had been further admitted that invoices and AR-3As were received by them without any accompanying cotton yarn, and in turn, they had prepared invoices and AR-3As in the name of M/s. RR Reeling Unit-II and sent the same to STL, for which fabrication he was paid @0.25 paise per kg. Shri V. Ramakrishnan was also admitted that

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during the period 01/2000 to 3/2000, they had received 14 such invoices and AR-3As for a quantity of 11,641,457 kgs without actual receipt of cotton yarn. In a further statement Shri V. Ramakrishnan also admitted that he had submitted 87 conversion bills for Rs. 1.60 per kg. without any actual conversion.

11.2. It is also pertinent to note that no receipt showing the movement of hank yarn from Erode to the factory of STL was produced either by STL or by RR Reeling Unit-II. This aspect was confirmed by Shri S. Nainar, Director of STL in his statement dated 18.07.2002, wherein he had stated that they received only documents such as AR 3As and invoices raised by RR Reeling Unit-II and Bannari Amman and not hank yarn supposedly converted from cotton yarn sent by STL.

11.3. With regard to the retractions made during cross examination, ld. Adjudicating authority in para 23.2 of the impugned order has very adroitly pointed out that even though Shri V. Ramakrishnan stated that they had indeed done the job work, that assertion was untrue since only their source of income was a small tea-shop and that at the time of visit of officers, Shri V. Ramakrishnan had informed that the machines had been dismantled in order to sell them for repayment of loan. He could also not able to produce any material evidence during cross examination as to how they made expenses towards wages, power, maintenance etc., in connection with the job work. We therefore are unable to hold any quarrel with the adjudicating authority's holding that deposition of such person during cross examination does not merit any consideration. It is also interesting to note that the proprietor of RR Reeling Unit, or for that matter STL themselves, are silent about the procedure and the documentary evidence under which hank yarn was converted and disposed of from the job worker's premises.

11.4. In the event, we are of the considered opinion that there is no infirmity in the demand of Rs. 44,22,202/- confirmed by the adjudicating authority being duty on cotton yarn cleared by STL from its factory premises, purportedly for conversion into hank yarn to RR. Reeling Unit-II.

12.1 In **Annexure III** to the SCN, the demand raised pertains to duty on cotton yarn allegedly removed to Bannari Amman Reeling Unit (BARU). Allegations in the SCN are that BARU had not done conversions of yarn sent by STL, but that they were instead diverted in cheese form only to customers. Per contra, appellants contend that conversion work had indeed been done and documents prepared, that calculations of power consumption were erroneous and that the job work was done by using generating sets. In this regard, it is seen that on the day of visit of the officers to BARU, there was no stock of hank yarn or cotton yarn and no work was going on in the factory. Shri E.L. Gunasekhar, Proprietor of BARU then admitted that in respect of yarn received from STL, he had sold it on some occasions without actual conversion and had transmitted the sale proceeds to STL through

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the account of Dhanalakshmi Yarn Agencies also owned by him. He had also revealed that invoices/AR 3As had been prepared as if hank yarn was manufactured in his reeling unit without actual receipt of cotton yarn and had sent the said documents to STL by courier. In such cases, the cheese/cones were diverted to his customers directly from STL in his Dhanalakshmi Yarn Agencies account. Even where there was genuine conversion of cheese yarn into hank yarn, the latter was not sent back to STL but supplied to his customers; corresponding invoice/AR3As were however couriered to STL in these cases also. In a further statement, Shri E.L. Gunasekhar admitted that he did not have any lorry receipts for the transportations; he could not explain the low power consumption of 140 units power in July & August 2001 when compared to the claimed productions of 114060 kgs shown in the RG-I Register of BARU; he however stated that in the absence of E.B. power, the unit was run on diesel generator. The above admissions made by Shri E.L. Gunasekhar were subsequently retracted by him in cross examinations during adjudication proceedings, when, interalia, he stated that he does not know English; power connection was used only for lighting purposes; that reeling machines were run on 2 oil engines; that 70% of cone yarn had been converted into hank yarn and returned back and that 30% quantity was traded by him. However, we find that the ld. adjudicating authority has sufficiently demolished these revised assertions in para 24.6 and 24.7 of the impugned order, as follows:

"24.6 Shri E.L. Gunasekar in his statement dated 15.10.2001 as proprietor of M/s. Sri Dhanalakshmi Yarn Agencies had stated that he could read and write English well. But he contradicted himself during cross-examination by stating that he did not know English. I find it very strange that a man who has written his statement in his own handwriting in English says that he does not know English. This only proves that during cross-examination he does not want to tell the truth and wants to help the notices and himself.

24.7 He, in his statement dated 15.10.2001 as proprietor of M/s. BARU had stated that 2 oil engines were used only during power cuts. In his further statement dated 19.04.2002 had stated that electric motor of 3 H.P. was used to run the reeling machines and electric motor of 1.5 H.P. was used for running bundling machine. He further added that 2 oil engines were used only during power cuts and diesel was used as fuel for the running of oil engines. But during cross-examination, he had stated that power was used for lighting purposes only. Apparently, what he had deposed during cross-examination was far from truth for the simple reason that running oil engines for 14 to 15 hours a day by using diesel would not be economically viable. Further, he was silent about the use of bundling machine during cross-examination. Bundling is an important process in the manufacture of hank yarn. The electricity charges paid by him during April 2001 and June 2001 also confirmed that his power connection was not for lighting purposes only."

12.2 In the circumstances, we find no fault in the conclusion of the adjudicating authority that records maintained by BARU and AR-3As, the invoices issued by them were fabricated and that they did not indicate the extent of cotton yarn converted into hank yarn by them. No lorry receipts or any other proof has been adduced by the appellant to corroborate the claim of return of hank yarn from BARU to S"TL. Even in respect of quantity claimed by Shri E.L. Gunasekhar, Proprietor of BARU, to have been converted from cotton yarn into hank yarn, he has nonetheless admitted that the said goods were not sent to STL but was sold to his customers. To put the final nail into this masquerade is the revelation by Shri S. Nainar, Director of STL in his statement dated 18.07.2002, wherein it had been categorically stated that STL had received only the documents such as AR-3As, invoices raised by the job workers at Erode, and not hank yarn as claimed. It is not forthcoming from the available records that said Shri Nainar had at any time subsequently retracted his admissions; there is also no contention of the appellant in this regard.

12.3 In investigations, some buyers of yarn from STL clarified that they have purchased only cotton yarn in cheese form from STL, although in the accompanying invoices, description of goods was mentioned as hank yarn. In respect of one buyer M/s. Sri Siva Traders, Erode, to whom STL claimed to have been sold hank yarn to the tune of 156002 kgs. In 2000-01 and 225158 kgs. during 2001-2002 (upto 9/2001), however, investigation has revealed that the firm was not functioning in the said address and existed only on paper; occupant of the premises admitted that he had given his address to one Shri Kandasamy, Commission Agent in yarn, who had used the address for business correspondence in the name of Sri Siva Traders and that no yarn was received from STL at the premises; it was therefore clear that STL had used the name of Sri Siva Traders to raise fictitious invoices to sale of hank yarn.

12.4 Revenue has thus has been able to satisfactorily established that there is no evidence for movement of hank yarn from the job workers' to the factory of STL and that entries in RG-1 register to the contrary are doctored to cover up their actual modus. STL have also contended to have entered removal of converted hank yarn to buyers at Erode in their RG-1 register and that they had raised Central Excise invoices for such removals. However, there is no truth in these purported removals as found in the verification with the "buyers" of yarn from STL. Even in respect of some of the buyers who have claimed to have purchased only hank yarn from STL, the said assertions are found to be suspect in the face of other investigations.

12.5 Therefore, neither STL nor BARU have been able to convince that there was indeed movement of cotton yarn for conversion from STL to BARU, that the entire quantity had been converted into hank yarn and that post conversion, the hank yarn was returned to STL or that such returned hank yarn after conversion, had been again transported to various buyers.

12.6 In the event, the demand of Rs. 27,09,840/- being central excise duty evaded on clandestine removals of cotton yarn in cheese form under the pretext of conversion to hank yarn, finds credibility. For this reason, we uphold that there is no infirmity in

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the confirmation of said duty demand made by the adjudicating authority.

13. Appellants have also submitted that their clearances are exempted by virtue of Section 11C Notification and Board's Circular no. 628/19/2002-C.E dated 19/3/2002. For better understanding the relevant portion of the said circular is reproduced as under:-

> "I am directed to invite your attention to Board's Circular No. 72/88-CX. 6, dated 4-10-1988 vide which it was directed to issue protective show cause notices to demand duty on cotton yarn on cops/cones consumed captively or sent outside factory premises for conversion into Hank yarn till a final decision in the matter is communicated. Board was of the view that since plain reeled Hanks are used only by the Handloom Sector, charging duty on the intermediate goods i.e. cotton yarn on cops/cones etc. shall nullify the purpose of exemption. The Auditor General (Audit) has finally accepted the view of the department in this regard.
>
> 2. Pursuant to settlement of CERA objection in the matter, Board has decided that all such cases pending disposal and kept in call Book should be taken out and decided expeditiously.

A plain reading of the above Circular clearly indicates that the matter therein pertains only to protective SCNs, which had been issued earlier, for demand of duty on cotton yarn on cops/cons consumed captively or sent outside the factory premises for conversion into hank yarn. Board has conveyed the decision that duty should not be charged on the said activity. That may well be so. However, in the instant case, the issue pertains to clandestine removal of cotton yarn as such, in the guise of sending yarn to job

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workers for conversion into hank yarn. This being so, appellant's attempt to clutch the said circular is mis-conceived and will not help their case.

14. Appellant has contended that goods were cleared following Rule 96E procedure that under cover of AR-3As forms after intimation to the department, that periodical returns intimating clearance of goods under the exemption has been availed, that further, D-3 intimations were also filed by the job working unit about the goods under the exemption and that respective jurisdictional central excise officials have also verified and acknowledged the receipts of the goods. However, it has been conclusively established that these purported clearances of cotton yarn under AR-3As that claimed conversion by RR Reeling Unit and BARU, they are returned under D-3 intimations, the entries in RG-1 register at STL, and "purported" hank yarn to buyers was only a paper exercise without any such actual movement of goods for conversion. In the light of these discussions, what comes to the fore is that, the purported clearances of goods under AR 3As and D3 intimations made to the jurisdictional Central Excise office were only a sham purported by STL to create a paper trial. Filing of these intimations are only a procedural requirement to assist, manufacturers and it is not required by the central excise officers to physically ascertain the quantities sent out, or for that matter received in AR-3A and D-3 respectively, especially when the assessee is working under self-removal procedure. It is also not the contention of the appellant that the clearances/receipts had

been checked/verified by the central excise authorities. Appellants have made alternative plea that old interalia proceedings are hit by limitations since the department has issued the SCN 18 months after the visit of officers. These contentions would have held merit, if there was no controversy on the credence or credibility of the returns submitted by them or that there was no subterfuge involved. This is certainly not the case. On the other hand what is emerged is that all these intimations, AR-3As, D-3s, RG-1 entries and also monthly returns in respect of purported clearances etc., were all concocted to create a smoke screen for their clandestine activity. Therefore, they have not come out with clean hands. We are of the considered opinion that there has been unaccounted/clandestine removal of cotton yarn y STL subterfuge, suppression and wilful misstatement and collusion with BARU and RR Reeling Unit; with the sole intention of evading legitimate duty payable to the exchequer. The contentions of the appellant fail in all counts. On the other hand, investigation has successfully unearthed the questionable modus operandi of the racket who has caused prejudice to Revenue with intent to evade excise duty. Investigation has proved that clandestine removal of goods by the appellant was made following a pre-meditated design. Hence invocation of extended period of limitation in the notice under proviso to section 11A of the Central Excise Act and its affirmation in the impugned order is very much in order and does not require interference.

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15.1 Coming to the remaining appeals filed by the other appellants, they are in relation to penalties imposed on each of them in the impugned order, under Rule 26 of the Central Excise Rules.

15.2 In the event, the demands of central excise duties of Rs.10,42,361/-, Rs.40,49,636/- 24,81,537/- totalling Rs.75,73,534/- under proviso to Section 11A of the erstwhile Central Excise Act, along with interest liability thereon and imposition of equal penalty of Rs. 75,73,534/- is upheld and the appeal by STL in that regard dismissed. However, in view of equal penalty having been imposed under Section 11AC, we are of the considered opinion that additional penalty of Rs. 15,00,000/- imposed under erstwhile Rule 173Q/Rule 26 of Central Excise Rules is not required and hence we set aside the same.

15.3 Appellant Shri V. Ramakrishnan, Proprietor of RR Reeling Unit and Shri E.L. Gunasekha, Proprietor of BARU have also filed appeals respectively against penalty of Rs. 2,00,000/- and Rs.1,00,000/- respectively imposed on them under erstwhile Rule 9A, Rule 26 of the Central Excise Rules.

15.4 In his appeal Shri V. Ramakrishnan interalia referred to retraction of the statement given on 13.10.2001. He has further contended that it has been proved by documentary evidence that he had not entirely undertaken the conversion job and has argued that when all records have been seized he was not in a position to produce any material evidence during cross-examination as how he made the expenses towards wages, power etc. However, he has also submitted that he is only a sales agent of STL and indicates the latter decided to sell cheese yarn under the guise of hank yarn, they only would be involved and hat he plays no role in it.

15.5 Similarly, Shri E.L. Gunasekar in his grounds of appeal has alluded to cross-examination retractions and his statement thereon that he was indeed carried out conversion of cheese into hank yarn and that he had the sufficient machinery. He has further submitted that the finding of Commissioner that running oil machines for 14 to 15 hrs. a day would not be economically viable is erroneous.

15.6 We find the roles played by Shri V. Ramakrishnan and Shri E.L. Gunasekar have been sufficiently established by Revenue. The adjudicating authority has also comprehensively refuted the retractions made by these two persons in their cross-examination. The contentions of these two appellants are akin to quibbling about perceived minor technical inadequacies of investigation, while at the same time not being able to adduce evidences of transport documents for transportation of cotton yarn to their premises for conversion and subsequent return of converted hank yarn back to STL. There is no doubt in our minds that Shri V. Ramakrishnan and Shri E.L. Gunasekar were but important and willing players in the whole scheme of things orchestrated by STL, for whatever personal gain they must have benefited therefrom. In the event, and specifically viewed against the back drop of the total duty evasion of Rs. 75,73,534/-, the penalty imposed on these appellants are not at all disproportionately high. We therefore do not find any reason for interference in the imposition of said penalties on these appellants.

16. In the event, appeal E/376/2006 is dismissed except for setting aside of penalty of Rs. 15,00,000/-imposed on STL under erstwhile 173Q /Rule 25 of CER. Appeal Nos. E/319/2006 & E/345/2006 are dismissed.

17. All the three appeals are disposed of in the manner indicated above.

(Order pronounced in the open Court on 24-03-2017.)

24/03/2017

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

24.3.2017

(D.N. PANDA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

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