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

C/585/2006

(Arising out of Order-in-Appeal No. 6 & 7/2006-Cus. dated 27.7.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Coimbatore)

M/s. Premier Cotton Textiles Appellant

Vs.

CCE, Coimbatore Respondent

Appearance

Shri C. Saravanan, Advocate for the Appellant
Shri S. Nagalingam, AC (AR) for the Respondent

CORAM

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of Hearing / Decision: **03.03.2017**

Final Order No. 40404/2017

Per D.N. Panda

Appellant says that the raw material imported by it during the period October 1999 to March 2002 have undergone the process of manufacture. The resultant goods have been exported in fulfillment of the condition of Notification No.53/97-Cus. dated 3.6.1997 and appropriate quantum of foreign exchange have been realized. There is no violation made to the Export Import Policy in this regard. The only difficulty arose for

Customs, Excise & Service Tax Appellate Tribunal the department is that the percentage of the wastage occurred in the manufacturing process to the extent 25.93 for the period from October 1999 to March 2011 and 28.70% for the period from April 2001 to March 2002 was not acceptable to Revenue. But there was no SION (Standard Input Output Norm) prescribed by the policy which governed the appellant. Therefore, Circular No. 305/111/85-FTD dated 29.12.1986 relied by Revenue to restrict the wastage to 25% is of no avail to the department to realize the duty alleged to have been forgone on the waste material. Appellant further says that whatever the waste has occurred that has also fetched excise duty to the department without any allegation of finding of clandestine removal. In such circumstances, appellant's prayer is to allow the appeal without any customs duty being levied on the waste.

2. Revenue says that the SION norm against wastage was 25% of the input. That being fixed by the Board in terms of the aforesaid circular, the quantum of waste generated should not exceed 25%. The excess quantum shall be liable to customs duty which was in violation of Notification No. 53/1997-Cus. dated 3.6.1997.

3. Heard both sides and perused the records.

4. Prima facie, it does not appeal to common sense as to how without SION fixed by the EXIM Policy which governed the

appellant for the purpose of import and export and also the Notification governing the appellant, as aforesaid, having no mention about any SION or percentage of wastage, appellant shall be arbitrarily dealt.

5. Making further examination, it is noticed that the waste generated was not deliberate and the appellant has paid excise duty thereon when cleared. Department has not made any case to show that there was deliberate pilferage of the raw material by the appellant or diverted the same. In absence of any malafide being brought on to record, appellant cannot be suspected to have made any undue gain at the cost of the State. Therefore, arbitrary adjudication is not permissible. Accordingly, appeal is allowed.

(Dictated and pronounced in open court)

07 03 2017

(**MADHU MOHAN DAMODHAR**)
Technical Member

6/3/2017

(**D.N. PANDA**)
Judicial Member

Rex

Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (CESTAT)
चेन्नै / Chennai