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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/4184/2004 Date 23/07/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant

Vs

NAHAR INDUSTRIAL ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 503/2008- Excise dated 18-7-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S. NAHAR INDUSTRIAL ENTERPRISES LTD.,
JALALPUR P.O. DAPPAR, DISTT. DERABASSI
2. Adv. / Consult SH. BALBIR SINGH, ADV.,
C/O RESPONDENT
3. D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 600017
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 4184 of 2004

[Arising out of Order-in-Original No. 80-81/CE/2003 dated 23.7.03 passed by Commissioner of Central Excise, Chandigarh.]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical) M. Veeraiyan

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : NO

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Commissioner of Central Excise. Chandigarh — Appellant

Vs.

M/s. Nahar Industrial Enterprises Ltd. — Respondent

Appearance: Shri M.M. Singh, DR for the Appellants
Shri Balbir Singh, Advocate for the Respondent

<u>CORAM</u>:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

M. Veeraiyan

Date of decision : 14.7.2008

FINAL **ORDER NO.** 503 / 08-EX

Per M. Veeraiyan (for the Bench):

This is an appeal by the Department against the order of the Commissioner No. 80-81/CE/2003 dated 23.7.03. Heard both sides.

2. Relevant facts, in brief, are as follows:

a) M/s. Nahar Industrial Enterprises Ltd. Vill. Jalalpur, P.O. Dappar, Distt. Paitala (hereinafter called as M/s. NIEL) are engaged in the manufacture of grey fabrics/ woven processed fabrics of cotton, synthetic filament yarn and man made staple fibre falling within chapters 52, 54 & 55 of the 1st schedule to the Central Excise Tariff Act, 1985 .

b) Prior to 23rd November 2001, an independent textile processor in the name and style of M/s. Oswal Cotton Mills Ltd. was functioning and paying duty of excise @ 16% [equally apportioned between Basic Excise Duty and Additional Excise Duty (ST)] in terms of notification No. 11/2001-CE dated 1.3.2001. They were also availing deemed credit on declared inputs in terms of Notification No. 7/2001-CE (NT) dated 1.3.2001 as amended vide notification No. 28/2001-Central Excise(NT) dated 11.6.2001 and 53/2001-CE(NT) dated 29.6.2001.

c) As per the orders dated 8.11.2001 of the Hon'ble High Court of Punjab and Haryana passed in a petition filed by the company and the endorsement by the Registrar of Companies, M/s. Oswal Cotton Mills

M. Veeraiyan

Ltd. stood amalgamated with the Company M/s. NIEL with effect from 01.04.2001 as per their letter No. NF:GMC:01 dated 23.11.2001.

(d) Thus, the grey fabric unit and fabric processing unit got converted into one unit known as M/s. Nahar Industrial Enterprises Ltd. Since M/s. NEIL were a public limited company having two spinning units, one 100% EOU at Lalru and one spinning unit at Ludhiana, it became a "Multi Locational Composite Mill" as defined in the explanation to deemed credit notifications.

e) Holding that M/s. Oswal Wool Mills Ltd. stood amalgamated with the company M/s. Nail with effect from 1.4.01 as per the orders of the Hon'ble High Court of Punjab and Haryana and as endorsed by the Registrar of Companies, show cause notice was issued proposing to recover a sum of Rs.2,34,03,546/- representing the deemed credit availed/utilised in respect of processed fabric from unprocessed fabrics (not owned by the same mills).

3. Commissioner after holding that the amalgamation took effect only from 20.11.01 when the certified copy of the amalgamation approved by the Hon'ble High Court was filed with the Registrar of Companies and after following the precedent decision in the case of Techno Craft Industries (I) Ltd. vs. CCE, Mumbai III reported in 2000 (120) ELT 106 (Tri) dropped the proceedings.

4. Learned DR took us through the grounds of appeal and submitted that the proposal for amalgamation was with effect from 1-4-2001 which was duly approved by the Hon'ble High Court and therefore, the operative date 23.11.01 does not alter the effective date which in any case is 1.4.01.

5. Learned advocate appearing for the respondents reiterates the finding of the Commissioner.

6. We have carefully considered the submissions from both sides. When the matter came up before the Tribunal earlier a Misc. order dated 22.3.06 was passed to the following effect:-

> "4. Learned counsel for the respondent points out that upon allowing the appeal of the revenue, the assessee would become eligible to CENVAT credit (on actual payment basis) for the period in question and the credit so available would be about Rs.6 crores more than the deemed credit already availed of.
>
> The position is rather strange. It is not clear whether the intention of the Board is that the assessee should be allowed the higher credit on actual basis. The question can also arise whether revenue can file an appeal even when it is not aggrieved by an order.

5. The mater is adjourned to 10th April, 2006 in order to enable the SDR to obtain directions from the Board as to whether it wants to withdraw the appeal."

7.1. Learned DR has not been able to obtain any directions from the Board in this regard. The only issue to be considered is whether the amalgamation is to be effective from 1.4.01 or 8.11.01. Commissioner has followed the decision of the Tribunal in the case of Techno Craft Industries Ltd. cited supra, wherein it has been held as under:

> *"The wording used by the Hon'ble High Court indicates that although the Transfer date was 1.4.93, it became effective only on 8.3.94. This is apparent on the second above referred extracts from the High Court's order. The cessation of corporate entity of the Transferor Company would occur not on the Transfer date but on the effective date. Consequently, therefore, the eligibility to the benefit of the notification would survive upto the effective date. On this ground we find case for the appellants and allow the appeal with consequential benefits*".

7.2. In addition, we find that no extra benefit was sought to be derived by the respondents by claiming the effective date as 8.11.01/ 20.11.01. In fact, if the claim of the Department was accepted, then it was submitted that they are eligible for credit on actual basis which is on higher side.

7.3. The deed of amalgamation as approved by the High Court clearly provides for an effective date which is different from the date of approval

N. Veeraiye

granted by the Hon'ble High Court. That being the case, we do not find any infirmity with the order of the Commissioner.

8. Therefore, we reject the appeal filed by the Department.

(Operative part of the order pronounced in the open Court)

18/7/08

(Archana Wadhwa)
Member (Judical)

17/7/08

(M. Veeraiyan)
Member(Technical)

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