LEGRAM : CEGCANAL
ebsite : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. E/912 /2008 E/S/875/08 Date 04/08/2008

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

To :
M/S UNIWORTH TEXTILES LTD.

PLOT NO. 923-945,
URLA INDUSTRIAL ESTATE
RAIPUR (CG)-493221

M/S UNIWORTH TEXTILES LTD. Appellant

Vs

C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 546/08, S.O.NO.766/08 **Excise** dated 27-6-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. RAIPUR
   CENTRAL EXCISE BUILDING, DHAMTARI ROAD, TIKRAPARA, RAIPUR 492001.
2. Adv. / Consult
   MR.RUPESH KUMAR
   46, BANK ENCLAVE, DELHI
3. S.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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. EASY SERVICE TAX.

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No. 912 of 2008 with
Excise Stay Application No. 875 of 2008

[Arising out of Order-in-Original No. Commr/RPR/01/2008 dated 21.1.2008 passed by Commissioner of Customs & Central Excise, Raipur, CG]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

---

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? : NO
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

---

M/s. Uniworth Textiles Ltd. Appellant

Vs.

Commissioner of Central Excise Raipur Respondent

Appearance:

Mr. Rupesh Kumar, Advocate for the Appellant
Mr. H.K. Thakur , Jt. CDR for the Respondent

CORAM: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 27.6.08
Date of Decision : 27.6.08

FINAL **ORDER NO.** 546/08-EX
STAY ORDER NO. 766/08-EX.

Per M. Veeraiyan (for the Bench):

1. This is an appeal against the order of the Commissioner No. Commr/RPR/01/2008 dated 21.1.08.

2. After hearing both sides on the stay petition for a while, it was decided that the appeal itself could be disposed of finally. Accordingly, the pre-deposit of amounts as per impugned order is waived and appeal heard for final disposal.

3. Relevant facts, in brief, are as follows:-

a) The appellant is a 100% EOU engaged in the manufacture of all wool fabrics and other blended fabrics falling under Chapters 50,51 and 55 of the Central Excise Tariff Act, 1985. They procured materials without payment of duties of excise and customs availing the benefit available to 100% EOU. They applied to jurisdictional Deputy Commissioner on 4.7.02 for permission to send out for job work to M/s. Uniworth Textiles Ltd., Butibori, Nagpur. The permission was sought for sending 20lac mtrs. of all wool worsted fabric and product mix of pure silk fabric, poly viscose fabric and poly wool fabric for the purpose of processing and finishing. The permission was granted by the Deputy Commissioner.

b) In pursuance of the said permission, the appellant during the period 22.8.2002 to 31.7.2004, had sent grey fabrics [viz., All wool fabrics 1699928.70 meters =2796095.84 sq.mtr, All wool worsted fabrics 943075.60 meters = 1557464.22 sq.mtrs, Poly wool fabrics 67595.20 meters = 1106804.76 sq. mtr) and wool silk fabric 80937.90 mtr

=131826.86 sq mtr) under job work challans to UTL, Nagpur, for the purpose of processing into finished fabrics.

c) Out of total quantity of 2796095.84 mtrs of Grey fabric sent for job work, a net quantity of 2478912.90 mtrs only was received back by the appellant. The remaining quantity of 317182.94 mtrs. was neither received back after processing nor exported from the job worker's premises. The reason cited for the short receipt of 317182.94 mtrs of fabric was shrinkage during processing of the goods at the job worker's end.

4. A show cause notice dated 25.4.01 was issued alleging that a quantity of 317182.94 sq mtrs of fabrics has not been accounted for and therefore, proposing demand of duty amounting to Rs. 9,71,32,910/-. Commissioner vide his impugned order confirmed the demand of duty of Rs.9,45,39,374/- along with interest. He also imposed a penalty of Rs. 9,45,39,374/- under section 11AC of the appellant.

5. The learned advocate submits the following:

a) The appellant unit was not having facility for undertaking certain processes, therefore, after seeking permission from the jurisdictional Deputy Commissioner, and after executing B 17 bond removed the goods for processing to the sub-contract-or at Nagpur who was also another 100% EOU. The consignment have been removed as per the procedure prescribed by the Deputy Commissioner including giving intimation of the receipts of the goods, preparing challans for removal and receipt of the goods, that they indicated the quantity removed and received in both in linear meters and sq. meters.

b) They have undertaken processes like scouring of grey fabrics, drying of fabric, heat setting, dyeing, drying, singeing, OWS washing (open width scouring, drying, finishing, KI decasting. All these processes involve considerable shrinkage. These processes and the resultant shrinkage was inevitable to ensure that the fabrics acquired dimensional stability so that it would not shrink after washing and recleaning when it goes to the ultimate users.

c) The show cause notice proceeded on the assumption that there was heavy shrinkage of the goods. It has not taken into account that the goods were cleared to the job workers in linear meters and the goods are assessed in sq. meters. Since the unit for assessment is sq. mtrs. which depends upon both length and width considering shrinkage only in respect of one dimension is not justified. The shrinkage in sq. mtrs is always more than a linear meter for the simple reason that in linear meter only length is taken into account whereas in sq. mtrs. both length and width are considered.

d) Commissioner has not appreciated the study report which indicated that there was shrinkage at every stage of processing and there was no fixed norm for the shrinkage. It depends upon several factors like type of fibre used, count of the yarn used, TPI of the yarn used, type of the weave of the fabric, type of loom on which fabric is weaved, reed space taken, loom tension during weaving and first measurement of the fabric taken after weaving is complete.

e) The Commissioner has brushed aside the technical study report on percentage shrinkage in 100% cotton fabrics ~~whereas~~ holding that the appellant has dealt with all wool, wool silk and poly wool fabric~~s~~

6. The learned DR submits that the appellant has not produced any literature on their products. The appellants should have produced alternate value of the goods, if they did not agree with the valuations by the department but they neither produced the same nor given any reason for

this. The appellant has not voluntarily declared the fact of abnormal shrinkage to the department. It was only after audit objection, when necessary inquiry was conducted, the fact came to the notice and hence the extended period of limitation is invokable.

7. The learned DR reiterates the finding of the Commissioner and seeks upholding the order of the Commissioner.

8. We have carefully considered the submission from both sides. We find that the show cause notice has arisen due to audit objection which held that the total quantity of grey fabrics sent for job work was at much higher side as compared to the total quantity of finished fabrics taking into account ~~seasonal~~ reasonable shrinkage and wastage generated all taken together. The said audit objection takes note of the submission by the assessee to show that the quantity of finished goods including the quantity of shrinkage and waste taken in running meters tallies with the quantity of grey fabrics in running meters sent for processing. It also proceeds on the assumption that the quantity of fabrics is always ascertained in terms of sq. meters and not in running meters; that the quantity of fabric if sold in running meter the value varies with variation in the width of the fabric. This submission has not been appreciated and dealt with. This is a basic dispute regarding the unit of measurement of the fabric based on which comparison was made and shortage was ascertained was not identical. This submission is fundamental to the issue. Further the appellant has made submission that the shrinkage has been in the knowledge of the department as the same issue has been the matter of dispute covered in an earlier show cause notice. These facts have also not been adequately dealt with by the Commissioner.

9. Therefore, we set aside the order of the Commissioner with the direction to consider all these disputed facts afresh and decide the issue after

hearing the appellant. The appellants shall produce the evidence sought to be relied upon by them within two months from the date of receipt of this order and the Commissioner shall decide the case within two months after the expiry of time limit prescribed for filing written submissions.

10. The appeal is allowed by way of remand. All issues are kept open. We express no opinion on merits.

11. Stay petition is also disposed off.

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

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)

ss