TELEGRAM : CEGCANAL
Website : 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/3503/2006,3553/2006 - EX[DB] Date 14/10/2008

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

To :
M/S HINDUSTAN FIBRES LTD
BANBIRPUR, BHIWADI, RAJASTHAN.

M/S HINDUSTAN FIBRES LTD Appellant
Vs
C.C.E.JAIPUR. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 749-750/08-**EX[DB]** dated 13-10-08 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.JAIPUR.
   NCRB,STATUE CIRCLE,C-SCHEME, JAIPUR.
2. Adv. / Consult
   MR.BALBIR SINGH
   MASTAN & CO,C-5/9,SAFDARJUNG ENCLAVE,N.DELHI
3. C.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 - 3
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
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

17. SH G.S.SINGHVI
    MANAGING DIRECTOR M/S HINDUSTAN FIBRES LTD, BANBIRPUR, BHIWADI,RAJASTHAN.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal No. 3503 & 3553 of 2006

[Arising out of the Order-in-Original No. 68/2006-Comm dated 28/09/2006 passed by The Commissioner of Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, 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? :

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

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities? :

M/s Hindustan Fibres Ltd. & Ors. Appellant

Versus

CCE, Jaipur Respondent

Appearance

S/Shri Balbir Singh and Rupender Singh, Advocates – for the appellant.

Shri H.K. Thakur, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 28/08/2008.
DATE OF DECISION: 13-10-2008

Final Order No. 749-750/08 Dated : 8-9-08

Per. Rakesh Kumar :-

The appellant in their factory at Banbirpur, Bhiwadi, Rajasthan, manufacture cotton yarn in cone and hank form falling under chapter heading 52.05 of the Central Excise Tariff Act, 1985. The cotton yarn in plain reel hank form is fully exempt Central Excise Duty under Notification No. 3/01-CE dated 01/03/01 and its predecessor notifications. The point of dispute is as to whether the cotton yarn manufactured by the appellants was in plain reel hank form and hence fully exempt from duty, as claimed by the Appellants or was in cross reel hank form and hence liable for duty, as held by the Revenue. On the basis of certain inquiries initiated by the Jurisdictional Central Excise officers in September 2001, a show cause notice dated 01/01/2002 was issued to the appellants alleging that throughout during the period from

1996 to 2001, the Appellant had manufactured only cross reel hank yarn and cleared by misdeclaring the same as plain reel hank yarn and on this basis demanding duty amounting to Rs. 2,70,25,962/- along with interest, and proposing imposition of penalty on the Appellant company under Section 11AC of Central Excise Act, 1944 as well as under Rule 173Q (1) of Central Excise Rules, 1944/Rule 25 (1) of Central Excise Rules, 2001 and also imposition of penalty on Shri G.S. Singhvi, Managing Director of appellant's company under Rule 26 of Central Excise Rules, 2001. This matter was adjudicated by the then Commissioner, Central Excise, Jaipur-I vide order-in-Original dated 30th April 2003 by which the duty demand of Rs. 2,70,25,962/- alongwith interest was confirmed against the Appellant, a penalty of equal amount was imposed on Appellant company under Section 11AC and beside this, a penalty of Rs. 5,00,000/- was imposed on Shri G.S. Singhvi, M.D. of the appellant company. However, on appeal to the appellant Tribunal, the Tribunal vide order in appeal No. 639-640/05 dated 13/04/05 set aside the Commissioner's order and remanded the same for denovo adjudication with directions that Commissioner shall make available to the Appellants, the copies of the reports and other materials relevant to the case which have been sought by them in their reply to Show Cause Notice, allow the Appellants to file reply to the show cause notice and thereafter decide the matter after giving an opportunity of personal hearing. The Commissioner, Central Excise, Jaipur vide denovo adjudication order dated 28/09/06 once again passed an order, same as that of his predecessor Commissioner and it is against this order that the present appeals have been filed.

2. Heard both the sides.

2.1 Shri Balbir Singh, Advocate, the learned counsel on behalf of the Appellant made the following submissions :-

(1) There is no evidence with the department to prove that the Appellants were manufacturing cross reel hank yarn during the period of dispute. The statements of Shri R.K. Garg, Chief Executive of the Appellant company and Shri B.P. Tiwari, DGM (Technical) had been recorded under threat and duress. In fact, Shri B.P. Tiwari had been illegally detained by the investigating officers and was man-handled and forced to write

statements that the Appellant company was manufacturing cross reel hank yarn. Due to man-handled, Shri Tiwari has received certain injuries which was reported to a doctor in City Nursing Home, Bhiwadi. All these statements have been retracted and therefore are of no evidence value. In fact, Shri G.S. Singhvi, M.D. of the appellant's company in his statement dated 08/10/01 has clearly stated that since inception this plant was manufacturing cotton yarn in plain reel hank form only.

(2) During the proceedings, the statement of machinery supplier Shri Salil Malhotra, authorized signatory of M/s Metro Textile Traders, Ludhiana, the machinery supplier, was recorded, wherein he stated that the machinery supplied to the Appellant is capable of making plain reel hank yarn but the same can also make cross reel hank yarn with some adjustment and addition of small parts but he also clarified that their company had not supplied any such spare parts. Though, the officers have the visited Appellant company's factory several times during the investigation, there is no Panchnama confirming that the machines was found to be fitted with the parts enabling the production of cross reel hank yarn.

(3) The officers during investigation conducted inquiries with several yarn dealers of Kishangarh,

Beawar and Bhilwara who had been purchasing yarn from the Appellant company. But the except for the statement of Shri Rajesh Toshniwal of M/s Komal Synthetics, the statements of the other dealers have not been supplied or disclosed by the department. Even Shri Rajesh Toshniwal in his statement has stated that he had purchased only the plain reel hank yarn but the department on the basis of the test reports of the sample of yarn in the business premises of M/s Komal Synthetics has alleged that M/s Komal Synthetics had purchased cross reel hank yarn from the Appellant company. The test report of the sample is unreliable as the sample drawn had not been stored in a tight packing.

(4) The Investigating Officer at the time of their visit to the factory on 27/09/01 had also drawn sample and the test report of those samples is being relied upon as evidence that the Appellants were manufacturing cross reel hank yarn. However, these samples had been taken from unfinished stock of yarn which was yet to be packed and the samples taken had not been stored in a tight packing. Since in spite of the Appellant company's request, the duplicate of the sample drawn on 27/09/01 had not been given by the officers, the Appellants asked for retest and on the appellants' request another sample was drawn on 12/10/2001 and the same on test by CRCL was reported vide test report dated 19/11/01 to be

plain reel hank yarn. But this test report has not been considered.

(5) The Central Excise officers had visited the appellant's unit on 27/02/99 and 28-29/02/2000 and on none of these occasions did they report the manufacture of cross reel hank yarn.

(6) Among the documents resumed by the department from the Appellant's premises there is some correspondence of the Appellant company with their customers, where the customers have sent some complaints regarding the quality of plain reel hank yarn supplied by the Appellant company. This correspondence with the customers clearly shows that the Appellant company has been manufacturing the plain reel hank yarn. Notification of process and machinery by the Textile Commissioner officers. The Appellants also filed quarterly return with the Textile Commissioner informing the total quantity of plain reel hank yarn manufactured.

(7) The Appellant being a manufacture of yarn in hank form was registered with Textile Commissioner. The registration is granted after inspection and verification of the process and machinery by the Textile Commissioner officers. The Appellants also filed quarterly return with the Textile Commissioner informing the total quantity of plain reel hank yarn manufactured.

3. Shri H.K. Thakur, the learned Joint Departmental Representative made the following submissions :-

(1) At the time of the officer's visited to the unit, certain samples from the yarn in stock had been drawn and the same were forwarded to the Central Revenue Control Laboratory (CRCL), New Delhi for the opinion as to whether the same is plain reel hank yarn or cross reel hank yarn and the CRCL vide report dated 08/10/01 reported the samples to be of cross reel hank yarn. This gives an indication that during that period of dispute, the Appellants were manufacturing cross reel hank yarn and were misdeclaring the same as plain reel hank in order to evade the duty. In this regard, statement dated 04/10/01 of Shri R.B. Tiwari, is quite revealing. In this statement, Shri Tiwari admitted that the machines in the factory are fitted with some attachments by which cross reel hank yarn can be produced whenever the Appellant want and ever since he is working in this unit, the machines produced only cross reel hank yarn. Though Shri Tiwari retracted his statement, his retraction is only an afterthought.

(2) The test reports of the samples drawn from the premises of M/s Komal Synthetics also indicated that the same was cross reel hank yarn which shows that the Appellant had supplied the cross reel hank yarn to M/s Komal Synthetics by misdeclaring the same as plain reel hank yarn.

(3) Since the machinery in the Appellants factory was capable of producing cross reel hank yarn, the Revenue has correctly demanded duty by treating the entire production from 1996 to 2001 as cross reel hank yarn.

4. We have carefully considered the submissions from the both the sides. The point of dispute in this case is as to whether the Appellant's factory during the period from 1996 to 2001 had produced only cross reel hank yarn or produced plain reel hank yarn. The evidence relied upon by the Revenue in support of its allegation that throughout the period of dispute, the Appellant's factory had manufactured only cross reel hank yarn and had cleared only cross reel hank yarn, can be summarized as under :-

(i) CRCL test reports of the three samples of the yarn drawn by the officers on their visit to the factory premises on 27/09/01 which reported the yarn to be cross reel hank ;

(ii) CRCL test report of the sample of the yarn drawn from the premises of M/s Komal Synthetics, a dealer who has purchased the yarn from the Appellant. This test report also reports the yarn to be cross reel hank.

(iii) Statement dated 04/10/01 of Shri R.B. Tiwari production supervisor, wherein he has stated that the machinery installed can produce cross reel hank as well as plain reel hank and that ever since he has also started working in this company, the factory has been manufacturing only the cross reel hank yarn; and the statement of Shri Salil Malhotra of the machinery supplier stating that it is his firm which had supplied the machines to the Appellants and these machines after attaching some attachments can produce cross reel hank yarn.

4.1 The point to be decided is as to whether the above evidence is sufficient to conclude that through the period of dispute, the Appellant company had manufactured and cleared only the cross reel hank yarn.

5. In our view, the above evidence is not sufficient to arrive at this conclusion in view of the following :-

5.1 The correspondence of the Appellant company with their customers regarding complaints about the quality of the plain reel hank yarn supplied by the Appellants indicates that the Appellants were producing plain reel hank yarn. For arriving at any definite conclusion on the point is as to whether the Appellant was manufacturing cross reel hank yarn or plain reel hank yarn extensively, inquiry should have been conducted with a large number of buyers. But the same has not been done. The Revenue has brought on record only the test report of the sample drawn from the business premises of M/s Komal Synthetics a dealer who has purchased the yarn from the Appellant, but just on the basis of this test report it cannot be concluded that all the dealers had purchased only cross reel hank yarn.

5.2 The statement of Shri Salil Malhotra, the machinery supplier indicates that the machinery supplied by him and installed in the Appellant's unit is capable of manufacturing cross reel hank yarn after attaching some attachments. But Shri Malhotra in his statement has also stated that he has not supplied those attachments. There is no Panchnama or technical expert's opinion on the point as to whether the machines installed in the Appellant's factory were fitted with the attachment for manufacture of cross reel hank yarn.

5.3 The revenue relies upon the statement dated 04/10/01 of Shri R.B. Tiwari, the Technical Supervisor of the appellant's factory, wherein he has stated that the machinery installed in the Appellant's factory was capable of manufacturing cross reel hank yarn and that the factory was indeed manufacturing cross reel hank yarn but this statement was immediately retracted by him vide telegram dated 05/10/01 addressed to the Commissioner. A retracted statement can be relied upon as evidence if only it is corroborated by other independent evidence. But in this case, except for the test reports of the samples drawn at the time, of the officers visit to the unit on 27/09/01 and test report of the sample drawn from the stock of yarn at M/s Komal Synthetics's premises, there is no much evidence. The second sample drawn from the factory on 12/10/2000 on the Appellant's request, was on test by CRCL found to be plain real hank yarn. Shri G.S. Singhvi, M.D. of the appellant's company in his statement dated 08/10/01 has stated that their unit was producing the yarn only on ~~corn~~ cone or the plain reel hank form, that more than 50% of the production of cotton yarn is in plain hank form to fulfill the obligation laid down by the Textile Commissioner each year, that he has never given the direction to his technical staff to switch over from the production of plain reel hank yarn to cross reel hank yarn and that they have never supplied ~~to~~ cross reel hank yarn to any dealer. When the Textile Commissioner has laid down the norms for cotton yarn manufacturers for producing certain quantity of yarn in plain reel hank and when Shri Singhvi has claimed that they have to produce certain quantity of plain reel hank yarn as per the direction of the Textile Commissioner, this aspect should have been cross checked but we find that no such inquiry has been conducted in this regard.

5.4 On the basis of the above evidence, while it can be said that the Appellant have produced cross reel hank yarn on some occasions, it would be totally wrong to conclude that throughout during the period from 1996 to 2001 the Appellant company produced only cross reel hank yarn. Therefore while, the stock of yarn found in the factory premises at the time of the officer's visit to the factory on 27/09/01 and the stock of yarn found in the premises of M/s Komal Synthetics which on test by the CRCL was found to be cross reel hank yarn, can be treated as cross reel hank yarn, ~~and~~ the findings of these tests cannot be applied to the other clearances.

Tribunal in a series of judgment in cases of **Kiran Spinning Mills, Bombay vs. Collector of Central Excise, Bombay** reported in **1988 (33) E.L.T. 137 (Tri. – Del.)**, **Pattani Chemicals vs. Collector of Central Excise** reported in **1991 (56) E.L.T. 253 (Tri. – Del.)**, and **Bee-Am Chemicals Ltd. vs. Commissioner of Central Excise, Raigad** reported in **2004 (167) E.L.T. 534 (Tri. – Bom.)** has held that test report pertaining to a particular lot can be applied only in respect of the material of that lot and the same cannot be automatically applied in respect of the clearances made prior to such tests and the Tribunal judgment in case of M/s Pattani Chemicals (Supra) has been upheld by Hon'ble Supreme Court vide judgment reported in **1998 (98) E.L.T. 582 – S.C.** In view of this, in respect of past clearances, other than the retracted statement of an employee – Shri B.P. Singh there is no other evidence that the yarn manufactured and clearance was cross reel hank yarn. It is well settled law that allegation of duty evasion cannot be based merely on assumptions – Hon'ble Supreme Court judgment in the case of **Outh Sugar Mills Ltd. vs. Union of India** reported in **1978 (2) E.L.T.**

J172 (S.C.) which has been followed by this Tribunal in a series of judgments.

7. In view of the above, we hold that the duty can be charged only in respect of those goods, which on tests were found to be cross reel hank. We, therefore, set aside the impugned order and remand the matter to the Commissioner for re-determination of the Appellant's duty liability based on the above finding and re-quantification of the penalty to be imposed on the Appellants, in view of the reduced duty liability. The appeals stand disposed of, as indicated above.

(Pronounced in open court on 13.10.05)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK