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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/2028/2008-2029/2008 - EX[DB] & E/S/1982-1983/08-EX   Date 16/12/2008

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

To :
M/S C.T.COTTON YARN LTD. (100% EOU)
25-B, INDUSTRIAL AREA, MALANPUR, DISTT BHIND
(M.P.)
M/S C.T.COTTON YARN LTD. (100% EOU)   Appellant
Vs
C.C.E. INDORE   Respondent

I am directed to transmit herewith a certified copy of **Final order No**.932-933/08& S.O.NO. 1274-75/08-EX. dated 04-12-08 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. INDORE
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~~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). Thyagarava 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
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Assistant Registrar
(Excise Appeal Branch)

17.SH. ASHWANI DEEWAN,
DELHI BLUE APARTMENT-2,
FACTORY ROAD, SAFDARJUNG
RING ROAD, N. DELHI-

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 Stay Application Nos. 1982-1983 of 2008 in Appeal Nos. 2028-2029 of 2008

M/s C.T. Cotton Yarn Ltd. & Ors. — Appellant
[Shri Jagmohan Bansal, Advocate]

Versus

CCE, Indore — Respondent
[Shri K.K. Goyal, Auth. Rep. (Jt. CDR)]

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

DATE OF HEARING : 11/11/2008.

FINAL Order No. 932 - 933/08-Ex Dated : ___________
STAY ORDER No 1274-75/08-Ex

Per. D.N. Panda :-

At the very outset, when both the stay matters were called Shri Jagmohan Bansal, learned counsel on behalf of the appellant was very fair to say that so far as the excise duty demands of Rs. 3,[illegible],05,540/-, Rs. 1,85,65,044/-, Rs. 2,54,28,504/- and Rs. 12,58,776/- and Customs duty of Rs. 91,22,360/- are concerned, those demand arose for violation of law. The appellants have no evidence to plead defence for all these demands. The appellants also state that the proceedings were initiated under appropriate provisions of law. So far as the duty demand of Rs. 12,40,084/- is concerned, the learned counsel submits that such demand arose out of double taxation. Therefore, he prays that on this limited issue if the matter is remanded, learned Adjudicating Authority shall do justice to the appellant going through their pleadings and evidence.

2. Learned counsel further submits that so far as the penalties are concerned, those are heavy doses and un-reasonably imposed. Therefore, that may be waived.

3. Learned departmental representative submits that when the appellant admits that they have no case in respect of demands admitted as aforesaid except to the extent of demand of Rs. 12,40,084/-, they are not entitled for any leniency so far as penalty was levied on them. Accordingly entire demand admitted by them should be confirmed and for the demand of Rs. 12,40,084/- the appellant may be allowed an opportunity for leading defence before learned adjudicating Authority.

4.1 Heard both sides extensively and perused the records.

4.2 The Appellant is a 100% EOU and was working under letter of permission issued by Development Commissioner, Noida. On the basis of an intelligence, the DGCEI officials noticed that the appellant manufacturing Cotton Yarn of different counts and

Polyester Yarn had been clearing the same for export out of India as well as sold in DTA adopting following means for evading duty payable, made investigation and found following irregularities and reported the same for adjudication.

> "(i) Clandestine manufacture and removal of goods i.e. cotton/polyester yarn made on the strength of parallel/fake invoices where duty amount payable on the goods so cleared though charged from the buyers had not been paid to the exchequer ;
>
> (ii) Non payment of duty on polyester staple fibre procured duty free and used in the manufacture of clandestinely cleared polyester yarn ;
>
> (iii) Short payment of duty of excise on DTA clearances on cotton/polyester yarn in excess of DTA entitlement ;
>
> (iv) evasion of duty on DTA clearances by forging the DTA clearance permission of Development Commissioner, NSEZ, Noida ;
>
> (v) Non payment of customs duty on imported SKO/ HSD not used in 100% EOU but diverted in DTA ; and
>
> (vi) Short payment of duty at a rate lower than the applicable rate on the goods cleared in to DTA."

4.3 The Authorities during investigation gathered various documents and examined the Managing Director, Factory Manager and others. On evaluation of entire material gathered in the course of investigation, the Investigating Authority was of opinion that the matter called for adjudication and duty and penalty should be levied with other consequences of law to follow.

4.4 Issuing show cause notice, the Appellant was heard. Learned Adjudicating Authority found that the appellant had questionable modus operandi as exhibited by para 35 to 41 of order of adjudication. The Authority found that clearances were made by fake invoices issued using the forged stamp and signatures of Central Excise and Customs Inspection I/C of the unit. Goods were removed in clandestine manner. Polyester staple fibre procured availing benefit of Notification No. 1/95-CE dated 04/01/95 were not used in goods meant for export as per Table given in para 38 of adjudication order. HSD/SKO imported duty free were diverted without using for the suppose that was meant. Goods cleared as per invoices did not corroborate with the returns filed with Excise Authority and duty evaded showing short/lesser quantity of clearance. Fraud was committed manipulating letter of permission for DTA clearance. Permission granted for 250 lacs of units of goods were manipulated to be 1280 lacs units. All such observations raised duty demand as well as levy of penalty.

5. In view of categorical admissions by the Appellant as aforesaid at the beginning of hearing, although stay matters were

fixed for hearing today, it is felt that an order to reduce the litigation this matter, should be disposed off finally after dispensing pre-deposit. We do so and proceed to dispose the appeals by this common order when both parties agree to reduce the litigation in view of admission of Appellant.

6. Double taxation pleaded by Appellant in respect of demand of Rs. 12,40,084/-, made it necessary to remand this limited issue to the learned Adjudicating Commissioner for reconsideration. But confirmation of the assessment in respect of other aspects of the demand admitted to be without any defence is dealt as under :

(i) The duty demand of Rs. 3,23,05,540/-, Rs. 1,85,65,044/-, Rs. 2,54,28,504/-, Rs. 12,58,776/- and Rs. 91,22,360/-, that has been raised at page 59 of the order and admitted shall sustain and the order of adjudication to such extent of demand remains untouched by us.

(ii) So far as the demand of Rs. 12,40,084/- appearing at page 60 of order of adjudication is concerned, the appellant should get reasonable opportunity of hearing by the learned Adjudicating Authority to lead defence and evidence in respect of pleading of double taxation as aforesaid.

(iii) In view of the submission by the revenue that the appellant have failed to seek personal hearing in the past, they should not repeat the same practice. The Assessing Authority shall be at liberty to decide the matter on merit, if the appellant fails to participate on the remanded issue. However the Authority should follow due process of law.

(iv) So far as the penalty on the admitted category of duty demand assessed is concerned, penalty attributable to such duty demand sustain.

(v) Penalty on the claim of double taxation deserve thread bare examination on the facts and circumstances of the case and a fresh look by the learned authority is desirable while granting reasonable opportunity of hearing.

7. In the result, the assessment is confirmed except being remanded to a limited as indicated above, partly setting aside the impugned order.

Case No. 1983/08.

8. This is a consequential appeal which arose out of Appeal case No. 1982 of 08. In view of certain findings, the learned assessing authority imposed penalty of Rs. 1,00,00,000/- (Rupees one crore only) under Rule 26 of Central Excise Rules, 2002 on the Appellant in this appeal. Similarly, learned Assessing

Authority has also imposed penalty of Rs. 50,00,000/- (Rupees fifty lakhs only) under Section 112 of Customs Act, 1962.

9. The Appellant pleads that penalties imposed were severe and when the appellant is sick financially and facing recovery proceeding before financial institutions, levy of deterrent penalty would be harsh since the Appellant admits duty liabilities to the extent aforesaid in appeal case No. 1982/2008. Learned counsel prays that penalty levied may be reconsidered in denovo proceeding when the matter goes back for deciding double taxation issue. In view of such pleadings, learned Adjudicating authority may reconsider the quantum aspect afresh in this appeal.

10. In view of our aforesaid observations and conclusion, dispensing pre-deposit, in this case also, appeal has been disposed in the manner indicated above, remanding back the matter to the learned adjudicating authority for fresh adjudication in respect of levy of penalty on this appellant.

11. In the result both stay applications and appeals are disposed in the above terms.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK