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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

Date 23/09/2009

Appeal No. E/3308/2004 - EX[DB]
E/4150/2004-EX(DB)

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

To :
MESSRS SULZER PROCESSORS PVT. LTD.

MESSRS SULZER PROCESSORS PVT. LTD.,
OPP. RAILWAY STATION, MANDAL,
BHILWARA (RAJASTHAN)
MESSRS SULZER PROCESSORS PVT. LTD.

19. M/S.SHRI GANESH TEXFAB LTD.,
18 KM STONE,CHITTOR ROAD,
HAMIRGARH,BHILWARA (RAJ.)

Appellant
Vs
Respondent

C.C.E JAIPUR-II

I am directed to transmit herewith a certified copy of **Final order No. 713-714/ 2009 EX[DB]** dated 13-8-09

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-II

THE COMMISSIONER OF CENTRAL EXCISE-II, NEW CENTRAL REVENUE BUILDING,
"C" SCHEME, OPP:STATUE CIRCLE, JAIPUR- 302005

2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

20. SH. BIPIN GARG, ADV.,
B-1/1289-A, VASANT KUNJ,
N. DELHI-70

3 C.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No. 3308 /2004- Ex(BR)

[Arising out of Order-in-Original No. 06/CE/JP II/ 2004 dated 6.4.2004 passed by Commissioner of Central Excise II, Jaipur]

M/s. Sulzer Processors Pvt. Ltd. Appellants

Vs.

Commissioner of Central Excise II Respondents
Jaipur

Excise Appeal No. 4150 /2004- Ex(BR)

[Arising out of Order-in-Original No. 09/CE/JP II/ 2004 dated 18.5.2004 passed by Commissioner of Central Excise II, Jaipur]

M/s. Shri Ganesh Texfab Ltd. Appellants

Vs.

Commissioner of Central Excise II Respondents
Jaipur

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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. Yes
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?

Appearance:

Shri K.K.Anand and Shri Bipin Garg, Advocates for the Appellants
Shri Virender Choudhary, SDR for the Respondent

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/ decision: 13.08.2009

FINAL **ORAL ORDER NO. 713-714/09-Ex**

Per M. Veeraiyan (for the Bench):

1.1 Appeal No. E/3308/04 has been filed by M/s. Sulzer Processors Pvt. Ltd. against the order of the Commissioner No.06/C E/JP II/2004 dated 6.4.04.

1.2 Appeal No. E/4150/04 is by Shri Ganesh Texfab Ltd. against the order of the Commissioner No. 09/C E/JP II/2004 dated 18.5.04.

1.3 Both these orders have been passed in pursuance of Tribunal's order of remand dated 9.4.02 and also involve common issues and therefore, being dealt with by this common order.

2. Heard both sides.

3.1 Relevant facts, in brief, in Appeal No. E/ 3308 are that the appellant filed a letter dated 3.5.01 declaring the value of investment of plant and machinery as Rs. 2,42,53,549/- supported by a certificate of chartered accountant and claimed the benefit of compounded levy scheme in terms of notification No. 16/01 NT dated 30.4.01. Subsequently, in terms of notification 32/01 NT dated 28.6.01 effective from 1-7-01 as amended by notification 41/2001 dated 21.9.01

intimated the value of investment on plant and machinery as Rs.2,83,98,770/- again supported by the certificate from the same chartered accountant. The value of plant and machinery as per the report of the Cost Accountant appointed by the department was Rs.3,73,69,369/-. The department held that the value of plant and machinery was in excess of Rs. 3 crores which was the maximum limit for extending the benefit claimed under the above scheme and it was denied. When the matter came before the Tribunal, the order was set aside and the matter was remanded for fresh decision in the light of decision of Hon'ble Gujarat High court in the case of Mangal Textile Mills Pvt Ltd. vs. UOI [2002 (49) RLT 265 (Gujarat)]. In pursuance of the said order of remand, the original authority has reconsidered the matter after taking into account the certificate of Cost Accountant who was appointed in terms of section 14A of the Central Excise Act and came to a conclusion that the value of plant and machinery is in excess of Rs. 3 crores and, therefore, and ,therefore, held that they are not eligible for the benefit of exemption claimed by them.

3.2 Similar are the facts in the case of Shri Ganesh Texfab Ltd. in appeal No. 4150/04. The value declared as per the letter dated 3.5.01 was Rs. 2,22,25,215/- and value declared vide their subsequent letter dated 1.10.01 was Rs.2,39,98,482/-. The value arrived at by the Cost Accountant appointed by the department was Rs.367 lakh as on 1.3.01 and Rs.374 lakh as on 1.5.2001.

4.1. Learned Advocate Shri K.K. Anand, appearing for M/s. Sulzar Processors Ltd. made the following submissions. The disputed period should be split up into two periods as there was change of law from 1-7-2001. For the period from 1.5.01 to 30.6.01, the notification 16/01NT dated 30-4-01 effective from 1-5-01 was in force and for the period from 1.7.01 to 26.9.01, the notification No. 32/01 dated 28.6.01 which was amended by notification 41/01 dated 21.9.01 was in force. According to him, the terms "plant and machinery" have not been defined in the notifications. However, the Central Government vide their order F.No. 10/6/97-IP dated 10.12.97 have prescribed guidelines to identify a small scale undertaking or ancillary industrial undertaking for the purpose of ascertaining the need for supportive measures and in that context prescribed the method for calculating the value of plant and machinery . As per the above guidelines, the value of items like DG sets, transformers and air compressors and effluent treatment plant need not be included. They have enclosed the certificate of Chartered Accountant which has been prepared based on the guidelines prescribed in the said circular of the Central Government. And accordingly, the value of plant and machinery is less than Rs. 3 crores and, therefore, they are eligible for concession. The revised certificate was given subsequent to clarificatory amendment dated 20.9.01 by notification No. 41/01. The inclusion of value of DG sets, transformers and air compressors, effluent treatment plant by the Cost Accountant who has been appointed by the Department is wrong. He relied on the decision of the Tribunal in the case of Ahmedabad Chemicals Pvt. Ltd. vs. CCE, Baroda [1984 (16) ELT 560] which is in the context of interpretation of notification No. 89/79 following the earlier decision in the context of notification No. 176/77 held that the value of certain items need not be included in determining the value of plant and machinery. He also relied on the decision of Tribunal in the case of KBICCF Ltd. vs. CCE [1990 (47) ELT 274 (Tri)] in which Tribunal, interpreting notifications Nos. 73/83 and 75/88, held that the value of certain goods should be excluded for the purpose of determining the value of plant and machinery.

4.2. He also submits that the Accounting Standard (AS 10) method of computing value of plant and machinery, even if applied should be applied only ~~from~~ for the period from 21.9.01 when the amendment was brought into force and not for earlier period and at any rate not for the period from 1.5.01 to 30.6.01 when notification 16/2001 was in force.

4.3. He also submits that the provisions of section 14A has not been followed in the matter of appointing Cost accountant for conducting audit of his company. Further, even if the demand is upheld, the issue involved relates to interpretation of provisions of notification involving possible difference of opinion and imposition of penalty dos not arise.

5. Learned advocate Shri Bipin Garg for Ganesh Texfab Ltd. made the following additional submissions:

(a) The Section 14 A can be invoked only for the purpose of verifying the correctness of the value of the final products manufactured by any company.

b) Further, for invoking Section 14 A, the concurrence of Chief Commissioner should have been obtained and concurrence for appointment of said Cost Accountant should have been intimated to the manufacturer and the appellant should have been directed to get the audit done through the said Cost accountant. Such procedure has not been followed in this case as the appellant has not been directed to get the audit done through the Cost accountant.

c) Even other wise, the Cost Accountant never visited their factory and they have prepared the report based on the documents like invoices given by them along with the declaration dated 3.5.01. The claim that they have visited the factory is not corroborated by any evidence and no panchnama was also drawn during the visit of Cost Accountant to the factory. Though the cost accountant did not visit the factory, the Commissioner has relied upon the reports of the Deputy Commissioner and also letter from cost accountant and the same have not been supplied to them and thus there is violation of principles of natural justice.

d) He took us through the detailed cross examination of Shri L N. Gupta during the proceedings before the Commissioner and submitted that his report should not be relied upon.

e) Drawing our attention to the various provisions of i~~ntended~~ AS 10 issued by the Institute of Chartered Accountant of India, it was submitted that only assets which are used directly in the manufacture of goods should be taken into account. He submits that the effluent treatment plant is not a must for manufacturing the final product. Similarly, the provisions of firefighting equipment and effluent treatment are in view of the statutory obligation and they should not be treated as plant and machinery for the purpose of extending the benefit claimed by them. And the certificate produced by them was clearly in terms of said standard.

6.1. Learned DR submits that the normal duty liability is based on the actual production and clearances of the appellants. By opting for the special scheme, the burden is on the assessee to prove that they fulfilled the conditions. The Notification 16/01 and the later notification No. 32/01 do not merely provide for production of certificate of Cost accountant /Chartered Accountant about the value of plant and machinery. It empowers the Commissioner to further investigate the matter. The eligibility limit does not depend upon the purchase value of machinery; it depends up on the value of "investment" on plant and machinery (installed in the factory); the value of plant and machinery installed is required to be included whether they are being used or not used, whether they are working or not working.

6.2. He also submits that the Commissioner was considering the matter afresh in the light of the direction of the Tribunal; the appellants have relied on the certificates of experts; therefore, it became necessary to appoint another expert to look into the value of plant and machinery. He also submits that the formality of taking the permission of Chief Commissioner has been complied with.

6.3. The norms /guidelines prescribed by the Central Government in connection with determination of a unit as a small scale unit or ancillary industry is not relevant for the purpose of this notification. He also submits that the amendment ~~of~~ by notification no. 41/01 dated 21.9.01 is for the purpose of removal of doubt. And this amendment being merely clarificatory in nature, should apply retrospectively. He also submits that the said clarification should be applicable even for the period from 1.5.01.

6.4. He took us through the relevant portions of the accountancy standard issued by the Institute of Chartered Accountant specifically paragraphs 8.1, 8.2, 9.1 and 9.4 in AS 10 method and submitted that the value of plant and machinery should include the value of all fixed assets and there is no justification to consider that only the goods which have been utilized directly in manufacture should be considered as plant and machinery. The valuation should include the elements like installation charges as mentioned in the said standard. He submits that the cost accountant appointed by the department has determined the value of plant and machinery directly in terms of AS 10 standard and he has been extensively cross examined and certificate given by him has been rightly relied upon by the Commissioner.

7.1 We have carefully considered the submissions from both the sides. The dispute is whether the value of plant and machinery installed as on 1.3.01 or 1.5.01 exceeded Rs.3 crore or not. According to the appellants the said values were below 3 crores in each case and they relied on the certificates of Charted accountant produced by them. The department is relying on certificates of cost accountant appointed by them and holds that the value of plant and machinery in each case is more than Rs.3 crores.

7.2 The difference in valuation is due to the fact that Charted Accountants on behalf of the appellants have followed the guidelines given by the Central Government in the order dated 10.12.97 for classifying the units as small scale undertaking or ancillary industry which was for the purpose of extending certain other benefits. At this stage it may be appropriate to reproduce the relevant portions of the said instructions:

"(b) In calculating the value of plant and machinery, the following shall be excluded, namely:-

(i) The cost of equipments such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores;

(ii) The cost of installation of plant and machinery;

(iii) The cost of research and development equipment and pollution control equipment;

(iv) The cost of generation sets and extra transformer installed by the undertaking as per the regulations of the State Electricity Board;

(v) The bank charges and service charges paid to the National Small Industries Corporation or the State Small Industries Corporation;

(vi) The cost involved in procurement or installation of cables, wiring, bus bars, electrical control panels (not those mounted on individual machines), oil circuit breakers or miniature circuit breakers which are necessarily to be used for providing electrical power to the plant and machinery or for safety measures;

(vii) The cost of gas producer plants;

(viii) Transportation charges (excluding of sales-tax and excise) for indigenous machinery from the place of manufacturing to the site of the factory;

(ix) Charges paid for technical know how for erection of plant and machinery;

(x) Cost of such storage tanks which store raw materials, finished products only and are not linked with the manufacturing process; and

(xi) Cost of fire fighting equipments.

(c) In the case of imported machinery, the following shall be included in calculating the value, namely:-

(ii) Import duty (excluding miscellaneous expenses as transportation from the port to the site of the factory, demurrage paid at the port);

(iii) The shipping charges;

(iv) Customs clearance charges; and

Sales tax."

7.3. The above said clarification / guidelines are at variance with the accepted accounting norms. For example, it excludes the cost of installation of plant and machinery. It excludes transportation charges for indigenous machinery or the plant and machinery to the site of the factory. Charges paid for technical know-how is excluded. In other words, the said instructions/guidelines appears to have been issued to serve the purpose mentioned therein. We have not been shown any authority for relying on the said guidelines to the present notification. We do not find any justification for importing the said guidelines for interpreting the present notifications.

7.4. The notifications 16/01 and 32/01 are identically worded. The relevant portions of the notification 32/01 are reproduced below:-

"8(1) The original value of the investment in the plant and machinery installed in the factory of the independent textile processor of the said goods, as on the 1st March, 2001 or on the 1st of May, 2001, whichever is higher, for a factory existing as on 1st May, 2001, of the independent textile processor or on the date of making the application under rule 96ZNA of the Central Excise Rules, 1944 or paragraph 7 of this notification, as the case may be, in the case of an independent textile processor commencing production for the first time in a new factory coming into existence after the 1st of May, 2001, shall not exceed three crore rupees, irrespective of whether such plant and machinery is in use or not, or in working condition or not, and the independent textile processor shall declare the original value of investment in such plant and machinery installed in his factory, on the dates mentioned above, in the prescribed format duly certified by a Chartered Accountant or Cost Accountant. The Commissioner of Central Excise may require any such documentary evidence as he considers appropriate in respect of such original value before granting the application.

8.2 If any additional plant and machinery is installed by the independent textile processor at any point of time, he shall intimate the same to the Commissioner of Central Excise within seven days of such installation and the original value of investment in plant and machinery together with the original value of investment in such additional plant and machinery shall not exceed three crore rupees. Where such original value of investment exceeds the limit of three crore rupees, the provisions of this notification shall not apply from the first day of the month in which such investment exceeded the said limit of three crore rupees.

8.6 The provisions of this notification shall apply to the said goods which are manufactured or produced on or after the 1st day of May, 2001."

Notification No. 32/01 was further amended by Notification No. 41/01 which reads as under:-

" In exercise of the powers conferred by rule 15 of the Central Excise (No.2) Rules, 2001, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance [Department of Revenue], No. 32/2001-Central Excise, dated the 28th June, 2001, namely:-

In the said notification, in paragraph 8, after sub-paragraph (1), the following shall be inserted, namely:-

'Explanation. – For the removal of doubt, it is hereby clarified that "the original value of the investment in the plant and machinery installed in the factory of the independent textile processor", shall be the original value as determined in accordance with the Accounting Standards issued by the Institute of Chartered Accountants of India on Accounting for Fixed Assets.' "

7.5. By amendment dated 21.9.01, it has been made abundantly clear that the method to be adopted for the purpose of determining the value of plant and machinery is as per AS 10. The certificate issued by the cost accountant appointed by the department clearly specifies that the valuation has been done in terms of AS 10 method. He has also been extensively cross examined on behalf of both the appellants and we do not find from the proceedings of cross examination anything to doubt the basic finding that the valuation has been done as per the AS 10 norms. The claim on behalf of the appellant that the transformers need not be treated as plant and machinery is clearly not acceptable as it is against the common understanding as well as against the accounting norms as mentioned earlier. Even the guidelines of Central Govt. dated 10.7.97 for determining small scale industries and ancillary industry refers to exclusion of extras transformers installed by the company. We have not been shown that the exclusion claimed by the appellants relate to extra transformers. Similarly, we are not convinced that the DG sets should be treated as other than plant and machinery. The effluent treatment plant which are mandatory in certain industries cannot be treated anything other than ~~but~~ the plant and machinery.

7.6. The certificates given by the CA on behalf of the appellants do not indicate that the valuation has been done in terms of AS 10 method. It merely mentions that they have taken into consideration the AS 10 norms. Nowhere, it is mentioned that the valuation has been actually done by adopting the said norms. The claims of the appellants are for excluding the value of items like DG sets compressors, effluent treatment plant machinery and these claim are merely based on the guidelines of the Central Government dated 10.12.97. We are not inclined to agree that the said guidelines are relevant for the purpose of interpreting this notification.

7.7. The decision of the Tribunal in the case of Ahmedabad Chemicals Pvt. Ltd. and KBICCF Ltd. relate to interpretation of notification No. 176/77, 89/79, 73/83 and 75/88 and the wording of said notifications are not the same as in the case of present notifications. At any rate, during the period when the above notifications were in force, there was no stipulation of adopting AS 10 norms for valuation of plant and machinery as prescribed in respect of present notification.

8.1. Learned advocate for the appellant in Shri Ganesh Texfab has also submitted that the appellants are seriously contesting the report of Cost Accountant. It is not mere contention about the veracity of the evidential value of the certificate that is referred by contesting the issue regarding the valuation of machinery. Such a contention should be revealed from the records in relation to the valuation proceeding. If one peruses the records, it is apparent that the appellants have availed the facility of cross examining the Cost Accountant who had issued the certificate. He was cross- examined in detail but there was not even a suggestion that the valuation report prepared by him has not adopted the actual value of machinery on the relevant date. The cross examination running in 3 pages was merely on irrelevant issues so far as it pertained to the valuation of the machinery is concerned. Undoubtedly, the appellants were seeking to claim the benefit of notification which would have granted them certain exemption as far as payment of duty is concerned, in case, they were able to establish that the total value of plant and machinery was less than Rs.3 crores. It is in this regard valuation reports were submitted from both sides. In spite of availing of opportunity of cross examination of the valuer appointed on behalf of the department, there was absolutely no cross examination on the aspect of actual valuation of the plant and machinery and valuation which had been done in that regard by the said valuer. Being so, it is too late for the appellant to contend at this stage, that they are contesting the veracity of the valuation report submitted by the Cost Accountant.

8.2. The appellants have also seriously contested the manner of determining the value of plant and machinery and submit that the value of certain plant and machinery like transformers, DG sets are to be excluded. It is not the case of the appellant that all the machinery mentioned in the certificate of Cost Accountant appointed by the Department were not in existence in their factory.

8.3. A submission has been made on behalf of Shri Ganesh Texfab Ltd., that the Cost Accountant did not visit the factory at all. We find that by the letter dated January 27, 2007, they sought for clarification from the Cost Accountant. They have not mentioned that Cost Accountant has not visited the factory at all. As already noted, even during cross examination, when opportunity was available to them, no specific question as to his visiting or not visiting the factory was put to him. In these circumstances the submissions/objections lack foundation.

8.4. A submission has been made on behalf of Shri Ganesh Texfab Ltd., that there is no evidence that the Cost Accountant was appointed by the Chief Commissioner in terms of Section 14A. We find that the Commissioner was considering the matter afresh in the light of the direction of the Tribunal; the appellants have relied on the certificates of experts; therefore, we agree with the contention of revenue that it became necessary to appoint another expert to look into the value of plant and machinery. In the given circumstances the commissioner, instead of deciding on his own the veracity of the views of the experts relied up on by the appellants, has rightly taken the view of another expert. Whether the said expert was appointed in terms of Section 14A or otherwise is immaterial. The submissions that the letter of the Deputy Commissioner was not made available are also not significantly relevant.

8.5 Further, it is to be noticed that the Commissioner was undertaking de novo proceeding and the Tribunal has granted an opportunity to the appellant to produce evidence before the Commissioner. The Commissioner has chosen to get the valuation done using the Cost Accountant and made available the certificate of Cost Accountant to the appellants and they were also permitted to cross examine the Cost Accountant who has given the certificate. This exercise, in our opinion, has been rightly undertaken in the context of order of the Tribunal. We do not find any violation of principle of natural justice as alleged by the appellants.

9. It was also submitted on behalf of the appellant in Shri Ganesh Taxfab that it was only for the Charted Accountants to certify as to what would form plant and machinery for the purpose of valuation. In this regard, attention was drawn to clause 8 of notification No. 32/01 read with explanation clause introduced by amendment under notification No. 41/01. If one reads clause 8 of the notification No. 32/01, it states that the original value of the investment in the plant and machinery installed in the factory of independent textile processor of the goods, commencing production for the first time in the new factory coming into existence after 1.5.01 shall not exceed Rs.3 crores irrespective of whether such plant and machinery is used or not, in working condition or not and the independent processor shall declare the original value of investment in such plant and machinery installed in the factory on the dates mentioned in the said notification in the prescribed form duly certified by Chartered Accountant or Cost Accountant. In the explanation clause in the notification No. 41/01, it was clarified that the original value of the investment in the plant and machinery installed in the factory of the independent textile processor shall be the original value as determined in accordance with the accounting standard issued by the Institute of Chartered Accountant of India for fixed assets. Plain reading of these provisions nowhere discloses that the identification of the assets as part of plant and machinery for the purpose of valuation should necessarily be done by the Cost Accountant. The clarification under notification No. 41/01 on the contrary, specifies that the determining of the valuation shall be in accordance with the accounting standard issued by Institute of Chartered Accountant of India for fixed

assets. Obviously, it would mean that the certificate to be issued by the Chartered Accountant or by the Cost Accountant on determination of valuation by applying the method as specified in the clarificatory notification. Clause 8 of notification No. 32/01 clearly specifies that the certificate can be issued either by Chartered Accountant or Cost Accountant. In fact, the notification does not stop at this stage. It further states that the Commissioner of Central Excise may require any such documentary evidence as it considers appropriate in respect of the original value. Merely because the party has chosen to furnish the certificate from Chartered Accountant that may not be final word as to the valuation of plant and machinery. Obviously, such documentary evidence has to be in the form of certificate by the Chartered Accountant or Cost Accountant. Being so, we find no substance in the contention sought to be raised on this regard.

10. In view of the above, we hold that the decision of the Commissioner that the appellants in each case have crossed eligibility limit of 3 crores with respect to the value of plant and machinery and, therefore, are not eligible for exemption claimed is legally correct and sustainable. However, we agree with the learned Advocate in the case of Sulzar Processors Ltd. that in the facts and circumstances of the case, no penalty is warranted.

11. Therefore,

(a) Appeal of Shri Ganesh Texfab Ltd. is rejected.

(b) Appeal of Sulzar Processors Ltd. is rejected in so far as it relates to demand of duty and interest. However, the appeal is partly allowed vacating the penalty imposed on the appellants.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

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