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

Appeal No. E/1687/2004-1688/2004 – SM[BR]

Date 02/03/2009

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR II — Appellant

Vs

BHILWARA MELBA DE WITTE LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 199 – 200 / 2009 - SM[BR] dated 9.2.2009

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

~~Assistant Registrar~~
~~(SM Appeal~~ Branch)

Copy to :
1. Respondent

(1-2) BHILWARA MELBA DE WITTE LTD.
VILL MORDI, BANSWARA

2. Adv. / Consult
MR.B.L.NARSIMHAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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 - 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~~
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 9.2.2009

Central Excise Appeal Nos.1687, 1688 of 2004

Arising out of the order in appeal No.573-754(RM)CE/JPR-II/03 dated 10.12.2003 passed by the Commissioner (Appeals II), Customs & Central Excise, Japur.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter 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 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

Appellant | Respondents

C.C.E., Jaipur II vs. M/s Bhilwara Melba De Witte Ltd.

Appearance:

Shri R.K.Verma, Authorized Departmental Representative (DR) for the Revenue and Shri Ravi Raghvan, Advocate for the respondent(s)

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 199-200/09-SM(BR)

Per M. Veeraiyan:

These two appeals are against the order of Commissioner (Appeals II) No. 573-754(RM)CE/JPR-II/03 dated 10.12.2003. The appeals were earlier considered the Tribunal and the Tribunal vide order dated 1.11.2004 dismissed the appeals filed by Revenue. Against the order of dismissal, Revenue filed appeal under Section 35G of the Central Excise Act and the Hon'ble High Court vide order dated 25.9.07 set aside the order and remitted back to the Tribunal for taking fresh/decision.

2. Heard both sides.

3.1 The relevant facts, in brief, are as follows:

a) Respondents procured duty paid POY took credit; they semi-texturised the said POY; treating the said the texturised POY as semi-finished goods, the same were cleared to M/s Mordi Textiles and Processors Ltd. for job work under Rule 57A© under cover of challans in terms of Notification No.214/86 dated 25.3.86; M/s Mordi Textiles & Processors Ltd. dyed the yarn and returned back to the respondent. These movements were under cover of challans in terms of Notification No.214/86 dated 25.3.86 prescribed thereunder.

b) The respondents used the yarn and manufactured grey fabrics and treating the said grey fabrics as semi-finished goods removed the same again to job workers under cover of challans in terms of Notification No.214/86 dated 25.3.86 to job workers namely M/s Mordi Textiles and Processors Ltd. and M/s Suntax Industries (P) Ltd. and received the processed fabrics back from the said job workers.

c) M/s Mordi Textiles and Processors Ltd. and M/s Suntax Industries (P) Ltd. were working under compounded levy scheme as independent textile processors.

d) The processed fabrics were used to manufacture laminated fabrics by the respondents which was cleared on payment of duty.

e) Respondents have treated the processed fabrics received by them as inputs and laminated fabrics as output and availed deemed credit in terms of Notification No.30/2000 dated 31.3.2000.

3.2 Similarly, duty paid nylon filament yarn was received and credit taken and knitted man-made fabrics was manufactured and treating the knitted fabrics as semi-processed goods were sent to job workers under cover of challans in terms of Notification No.214/86 dated 25.3.86 and received the processed fabrics. The job workers namely, M/s Mordi Textiles and Processors Ltd. and M/s Suntax Industries (P) Ltd were operating under compounded levy scheme. The processed fabrics were used in the manufacture of laminated fabrics. Deemed credit was taken on the processed fabrics.

3.3 The credit taken on the POY and nylon filament yarn has been utilized by the respondents for paying duty on the laminated fabrics.

3.4 The original authority in both the situations, held that the respondents were not eligible for deemed credit on the processed texturised fabrics received from the job workers who are working under compounded levy scheme on the ground that the movement to the job workers and back to the respondents was under Notification No.214/86.

3.5 Commissioner (Appeals) held that the processed fabrics returned by the independent processors are deemed to be duty paid under compounded levy scheme and therefore, they are eligible for the deemed credit under Notification No.30/2000.

4. The Hon'ble High Court remitted the matter for fresh consideration with the following directions and observations:

> " ***It is required to be noted that there are documents on record which show that no duty has been paid by the job workers. There is also an undertaking given by the assessee to the Assistant Commissioner, Cittorgarh in which assessee has stated as under:***
>
> > ***"we are supplying our Grey woven fabrics (Dh. 54 & 55) and Grey knitted fabrics (Ch.-60) of synthetics Filament Yarn and yarn of synthetics staple fabrics for Processing on job work and we are also supplying our inputs, Grey yarn (54 & 55), Dyes & Chemicals for dyeing of yarn on job work to M/s Modi Textiles and Processors Ltd., Banswara under Rule 57F(4) read with Notification No. 241/86. This intermediate product will be used in manufacturing of final product of Ch.-59.03, so we are undertaking the responsibility of discharging the liabilities in respect of Central Excise Duty leviable on the finished products."***
>
> ***It is required to be noted that whether the job workers had paid duty under compounded levy scheme or availed exemption as provided under the Notification No. 214/86-CE dated 25th March, 1986 is a question of***

fact which the adjudicating authority should have taken in to account. In any case, when the documentary evidence on record prima facie suggest that no actual amount has been paid at all and the adjudicating authority found that <u>the job workers of processed textile fabrics are not required to pay BED in terms of Notification No. 214/86,</u> the Tribunal, being the final authority so far as appreciation of evidence is concerned, should have considered all these documents on record in the form of challan, undertaking etc. for coming to the conclusion whether it is a case of taking double credit and on that basis, the Tribunal should have given its finding.

The learned Advocate for the appellant has also relied on the decision of Customs, Excise and Service Tax Appellate Tribunal, Northern Bench-C, New Delhi in appeal no. E/925/2004-NB-C decided on 16.4.2004 and submitted that in that case, the Tribunal has held that <u>duty liability has to be discharged by the assessee and not by the job worker and the assessee in the said case was the present respondent.</u> It is submitted that now the assessee cannot take contrary stand. Since the Tribunal has not discussed the aforesaid aspects and documentary evidence in detail, it would be just and proper to remit the matter back to the Tribunal for taking a fresh decision on the aforesaid aspects after considering the documentary evidence on records. While deciding the appeal, the Tribunal shall call for the record and thereafter will pass appropriate order as deemed fit in accordance with law.

5.1. Learned DR submits that the first movement of texturised POY for the purpose of dyeing and the second movement of grey fabrics for the purpose of processing are under Notification No.214/86. The job workers having received the same under Notification No.214/86 have returned back the same to the respondents under challans by filling part II of the challans under which they have received. The question of paying any duty by the job worker does not arise inasmuch as the processed fabrics was sent to and received from job workers under Notification No.214/86 and not sent by the job workers under the invoices under Rule 11. The respondents have taken Cenvat credit on the POY and they have utilized the same to pay duty on laminated fabrics. Permitting deemed credit under Notification No.30/2000 amounts to giving them double benefit.

5.2. He also submits that similar is the situation in respect of credit taken on nylon filament yarn, manufacture of knitted fabrics and sending such fabrics for processing and receiving back the processed fabrics from job workers who are under compounded levy scheme. Permitting deemed credit under Notification No.30/2000 amounts to giving them double benefit.

6.1. Learned Advocate for the respondents submits that processing of POY resulted in getting "texturised yarn" which is semi finished goods and processing dyed yarn resulted in getting grey fabrics which are semi-finished goods and the same were sent under the challans under 214/86. Such movements are permissible without forgoing the benefit of Cenvat credit taken on the POY.

6.2. As far as the respondents are concerned, the final products are laminated fabrics and the credit taken only on POY can be used for paying duty on the said final product as the intermediary stage movements were under Notification No.214/86.

6.3. As regards the last stage of receiving processed fabrics from the job workers which was used for manufacturing laminated fabrics, he submits that the processed fabrics have been manufactured by the job workers who were under compounded levy scheme. They have paid duty as per ACP determined by the Commissioner. Every clearance of processed fabrics by the said processors is deemed to have discharged the duty liability; these clearances have been included in the production records and in the returns submitted by the job workers to their jurisdictional Central Excise authorities. As the processed fabrics are used as input for manufacture of laminated fabrics, they are eligible to take deemed credit under Notification 30/2000 dated 31.3.2000. Similar is the position in respect of the product starting from nylon filament yarn ending with laminated fabrics. He seeks upholding the order of the Commissioner (Appeals).

7.1 I have carefully considered the submissions from both sides. I have also perused the challans produced by the learned DR in pursuance of the direction contained in the order of the Hon'ble High Court.

7.2 It is a peculiar case where the respondents have procured the duty paid POY and obtained the final products laminated fabrics. Before emergence of the final product, the respondents have sent, under the procedure prescribed under Notification No.214/86, texturised yarn for dyeing and grey fabrics for processing. These movements have not been objected to by the Department. The second movement of grey fabrics for processing is more relevant to the present issue.

7.3. If the grey fabrics have been used for processing within the respondent's factory itself to get laminated fabrics, then they are eligible only for the Cenvat credit taken on POY. The question of paying duty on the processed fabrics and then paying duty on the laminated fabrics may not arise.

7.4. If the grey fabrics have been removed to the job workers for further processing and if the job workers were not under compounded levy scheme, they would have returned the processed fabrics without payment of duty and the question of taking any deemed credit under 30/2000 did not arise.

7.5. The movement of grey fabrics , in this case, is under Notification No.214/86 and under challans prepared by the respondents and the processed goods have been received back under the same challans. Under these circumstances, the question of preparing invoice indicating payment of duty by the job workers under Rule 11 may not arise. However, in the present case, the job workers also happen to be operating under compounded levy scheme. The appellant has undertaken to bring back the goods after processing by the job worker. As the job worker has done the job work on materials sent under 214/86, the clearances effected by the job worker, in my opinion, can not be deemed to be duty paid.

7.6 Similar is the situation in respect of nylon filament used for manufacture of knitted fabrics which were cleared for job work under notification 214/86 and receiving processed fabrics for use in laminated fabrics.

7.7 Further the deemed credit is subject to fulfillment of Condition (4) of Notification 30/2000 dated 31.3.2000 which reads as under:

> ***"4. The provisions of this notification shall apply only to those inputs which have been received directly by the manufacturer of the final products from the factory of the manufacturer of the said inputs under the cover of an invoice declaring that the appropriate duty of excise has been paid on such inputs under the provisions of section 3A of the said Central Excise Act."***

In the present peculiar case, condition under clause (4) of the Notification is not satisfied.

8. Allowing deemed credit will clearly amount to allowing double benefit.

9. In view of the above, the appeals by the Department are allowed by setting aside the order of the Commissioner (Appeals) and restoring the order of the original authority. While restoring the order of the original authority, I set aside the penalty imposed as it is purely a question of interpretation of Notification and warrants no penalty.

10. Appeals are disposed of on the above terms.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

scd/