

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/472 /2008 -SM[BR] & E / 1430 / 2010 -SM[BR]

Date 23/09/2010

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

To :
M/S VANASTHALI TEXTILE INDUSTRIES LTD.
F-3-5, RIICO INDUSTRIAL AREA, SHAHJAHANPUR,
DISTT. ALWAR (RAJASTHAN)
M/S VANASTHALI TEXTILE INDUSTRIES LTD.

Appellant
Vs
Respondent

C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of Final order No.1023 - 1024 / 2010-SM[BR] dated 16.9.2010 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.R. KRISHNAN

297-E, POCKET-II, PHASE-I, MAYUR VIHAR DELHI-110091.

3 S.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 Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai - 17

9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

11 Easy Service Tax Online Dot Com Pvt.Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

14 Office Copy

15 Guard file


Assistant Registrar
(SM Appeal Branch)

[2] M/S VANASTHALI TEXTILE INDUSTRIES LTD.
F-3-5 RIICO INDUSTRIAL AREA, VIGYAN NAGAR,
SHAJAHANPUR [RAJ.]

**CUSTOMS EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,**
West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:16.9.2010

Central Excise Appeal No.472 of 2008-SM

Arising out of the order in appeal No.19(RKS)ST/JPR-I/2008 dated 24.1.2008 passed by the Commissioner (Appeals-I), Customs & Central Excise, Jaipur.

Central Excise Appeal No.1430 of 2010-SM

Arising out of the order in appeal No.123(DK)CE/JPR-I/2010 dated 26.2.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur I and
Appearance:

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter 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 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

M/s Vanasthali Textile Industries Limited ...

Appellants

Vs.

C.C.E., Jaipur ...

Respondent

Shri R. Krishnan, Advocate for the appellant/applicant
Shri S.K. Bhaskar, Authorized Departmental Representative (JDR) for the Revenue

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

Final Oral Order No. 1023-1024/2010 SMY (Br)

Per M. Veeraiyan:

1.1 Appeal No.E/472/2008 is arising out of the order in appeal No. 19(RKS)ST/JPR-I/2008 dated 24.1.2008 relating to the upholding of demand

of duty and imposition of penalty by the original authority for the period April 1997 to June, 1998.

1.2 Appeal No.E/1430/2010 is against the order of the Commissioner (Appeals) No.123(DK)CE/JPR-I/2010 dated 26.2.2010 upholding the demand of duty and imposition of penalty relating to the period April 1997 to September 1998.

1.3 The issues involved are identical in nature and therefore, the appeals are disposed of by this common order.

2. Heard both sides extensively.

3. The relevant facts, in brief, are that the appellant is a 100% EOU who have been granted approval for manufacture of terry towels. The appellants procured cotton yarn duty free in terms of Notification No.1/95-CE dated 4.1.95 which was subject to the condition that recipient, 100% EOU follows the Chapter X procedure. The appellants were found to have generated waste in excess of what has been permitted to them by the Department of Industrial Development, earlier known as Department of Industrial Policy and Promotion of Government of India. According to the permission granted by the Government, wastage permitted was 10.80% for sheared crammed fancy border terry towel and 5.66% for sheared terry towel without border. These norms were fixed vide letter dated 16th July 1998 revising upwards the earlier norms prescribed. Show cause notices were issued alleging that the appellants have generated wastage in excess and in some cases, 4% more than the prescribed norms and therefore, it was held that proportionate yarn which has gone into waste has not been used for the intended purposes and therefore, duty was proposed to be demanded under Rule 196 of the erstwhile Central Excise Rules, 1944 and penalties were also proposed.

4. In the case relating to Appeal No.E/472/2008, a demand of Rs.3,71,201/- stands confirmed and a penalty of Rs.5,000/- imposed under

Rule 209. In the case relating to Appeal No.E/1430/2010, a sum of Rs.1,31,880/- relating to the period April 1997 to June, 1998 stands confirmed and a penalty of Rs.1,25,000/- imposed under Rule 209 of the erstwhile Central Excise Rules. The above orders stand upheld by the Commissioner (Appeals).

5. Learned Advocate for the appellants submits that the entire raw materials procured by the appellants duty free stand properly accounted. They have also used the entire raw materials for manufacturing unsheared terry towels. Merely because, the wastage of yarn during shearing was slightly higher than what was prescribed by the Department of Industrial Development, no presumption can be made that proportionate quantity of yarn contained in the said waste was not used for the intended purposes. He submits that there is no justification for invoking Rule 196 for demand of duty. They have fully accounted the duty free inputs procured by accounting the final products as well as the waste arising during the course of manufacture of final product. He relies on the decision of the Tribunal in the case of Beekay Hygiene Products vs. C.C., Raipur reported in 2009 (236) ELT 115 to submit that it is for the Department of Industrial Development to take action, if any, for exceeding wastage norms prescribed by them.

6. Learned DR reiterates the finding and reasoning of the order of the Commissioner (Appeals). He submits that wastage norms fixed by the Department of Industrial Development is similar to SION norm and generation of waste beyond norms fixed would imply that the conditions under which the inputs have been procured duty free have been violated and therefore, the demands under Rule 196 of Central Excise Rules, 1944 have been validly made.

7. I have carefully considered the submissions from both sides and perused the records. Waste norms prescribed are generally on the basis of average industry norms and it does not mean that the actual wastage will be

mathematically equal to said norm for every manufacturer. The efficient among them could generate lesser wastage and others may generate excess wastage. Learned Advocate submits that the excess generation of wastage was during the initial stage of their manufacturing activity. It is not the case of the Department that the inputs procured duty free has been diverted by the appellants. The submission of the learned Advocate that the entire inputs procured by them stand utilised for manufacture of terry towel at the unsheared stage is not refuted. Under these circumstances, I am not able to uphold the findings of the authorities below that there is violation of condition of Chapter X procedure in respect of inputs procured by them. Therefore, I do not find any justification for upholding the demand of duty under Rule 196 of the Central Excise Rules 1944.

8. Since no demand is being sustained, the question of imposition of penalty does not arise. At any rate, merely because a manufacturer generated a higher percentage of wastage than the industrial norms, no penalty can be imposed. As already noted, it is not the case that duty free input was diverted in which case definitely penalty would be justified.

9. In view of the above, appeals are allowed with consequential relief, as per law.

(M. Veeraiyan)
Member (Technical)

scd/