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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/941 /2006 – SM[BR] Date 09/11/2010

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

To :
NAHATA FABRICS LTD.

. AT E1 & 2, INDUSTRIAL AREA, PALI MARWAR[RAJ.]

NAHATA FABRICS LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1167 / 2010-SM[BR] dated 12.10.2010 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 II

   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   SHRI G.K. SARKAR ADV.
   A-5, BASMENT LAJPAT NAGAR-III NEW DELHI

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 Publictions 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 (Haryana)
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:12.10.2010

Excise Appeal No. E/941/06-SM

[Arising out of Order-in-Appeal No.29(HKS)CE/JPR-II/2006 dated 12.01.06 passed by the Commissioner (Appeals-II) Jaipur]

For approval and signature:

HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)

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 should 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 Departmental authorities?	

M/s.Nahata Fabrics Ltd. ...Appellant

Vs.

CCE, Jaipur-II ... Respondent

Present for the Appellant :Shri.G.K. Sarkar, Advocate
Present for the Respondent:Shri.Anil Khanna, SDR

Coram: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

Final **ORDER NO.** 1167/2010 SM(BR) **DATED:12.10.2010**

PER: ASHOK JINDAL

This appeal is directed against the order of duty, interest and confirmation of penalty under section 11AC of the Central Excise Act, 1944. The facts of the case are that during the course of audit of the records of the appellant it was observed that the appellants had declared the value of fabrics lying under process as on 31st March, 2003/1.4.03 by adding the process cost in the value of under processed grey fabrics and taken the credit in terms of the Notification No.25/03 dated 25th March, 2003. Accordingly the statement of the Director of the appellant company was reported wherein he stated that the total cost of under processed fabrics was taken over into consideration for calculating the total declared value of such goods in the total value of under processed fabrics, value of gray fabrics by not deducting cash discount, processing charges including the colours and chemicals, transportation charges and profit and margin were taken into consideration. He also submitted that bifurcation was not required to be submitted by the appellant, hence they have shown the total value of the fabrics as on date. It was also explained by him that they have procured the colours and chemicals from the traders on which no central excise duty has been paid. It was alleged against the appellant that they have declared excess value of products by including the processing charges in the value of gray fabrics. Hence the show cause notice was issued. The demand was confirmed alongwith interest and equivalent amount of penalty. Aggrieved from the said order the appellant had before me.

2. The ld. Advocate for the appellant submits that they have declared the value as on 31st March, 2003 of the

input for further processing the same to make final product. Hence they have not committed any error while arriving at the value of the fabrics to claim the cenvat credit on the said value. To support his contention that the semi finished product is also input he relied on the decision in the case of Commissioner of Central Excise, Hyderabad vs. BalKrishna Textile Pvt. Ltd. reported in 2004 (178) ELT 984 (Tri.Bombay).

3. On the other hand, the ld. DR submitted that as per Notification No.35/03-CE (NT) dated 10th April, 2003 which is reproduced here as under:-

Notification No. 35/2003 – C.E. (N.T.) dated 10th April, 2003

In exercise of the powers conferred by sub-rule (3) of rule 9A of the Central Excise Rules, 2002, the Central Government, hereby declares, for the purposes of the said rule, the amount of credit of duty, as specified in column (3) of the table below, on inputs lying in stock or in process or on inputs contained in finished goods lying in stock, as specified in the corresponding entry in column (2) of the said Table, namely:-

TABLE

S. No.	***Description***	***Amount of credit***
(1)	***(2)***	***(3)***
1	*Input lying in stock or in process, namely,-* *(a) Texturised yarn lying in stock in a composite mill;* *(b) Yarn other than (a)*	*Rs 18 per Kg of texturised yarn multiplied by quantity in Kg of such*

	above; *(c) Fabrics (unprocessed or processed)*	*texturised yarn* *Deemed value multiplied by the rate of duty on such yarn* *Deemed value multiplied by the rate of duty on such fabrics*
2	*finished goods lying in stock, namely,-* *(a) Unprocessed fabrics of cotton not containing any other textile material;* *(b) Unprocessed fabrics other than (a) above*	*Declared value multiplied by 26% of the rate of duty on such unprocessed fabrics* *Declared value multiplied by 60% of the rate of duty on such unprocessed fabrics*

Explanation 1.- For the purposes of this notification, " Deemed value" shall be calculated in the following manner:

$$\text{Deemed value} = \frac{\text{Declared value multiplied by 95}}{[100 + \text{rate of duty}]}$$

Explanation 2.- For the purposes of this notification, "rate of duty" shall mean the rate of duty leviable under the Central Excise Tariff Act, 1985 (5 of 1986), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978), as the case may be, read with any notification, as on the 1st day of April, 2003;

Explanation 3.- For the purposes of this notification, " composite mill" means a manufacturer who is engaged in the processing of fabrics with the aid of power along with the spinning of yarn from fibres and weaving or knitting or crocheting of fabrics within the same factory and includes a multi-locational composite mill, i.e., a public limited company which is engaged in the processing of fabrics with the aid of power along with the spinning of yarn from fibres and weaving or knitting or crocheting of fabrics in one or more factories owned by the same public limited company.

and as per Sl.No.1 clause (c) the fabrics unprocessed or processed the amount of credit is to be taken on deemed value multiplied by the rate of duty on such fabrics. As per Notification, the appellant is entitled to take the credit on inputs only. He further submitted that in the case of R.I. Gandhi vs. Commissioner of Central Excise, Surat reported in 2006 (205) ELT 177(Tri. Bombay), has although it is a primafacie view, but the Tribunal has observed that the appellant has taken the credit on the higher value in compliance to Notification No.35/03 and asked the appellants to make deposit of the full amount of duty.

4. Heard both sides.

5. On careful examination of the submissions made by both sides, the facts and circumstances of the case is that whether the cash discount, processing charges including colours and chemicals, transportation charges and profit margin were to be taken into the value of the fabrics

calculated on the date of applicability of the Notification or not. In this case, the appellant has included all the above expenses in the value of fabrics to claim credit as per Notification 35/03-CE. The main contention of the appellant is that they have incurred expenses on the inputs and they have made some process on these inputs and these inputs have taken the shape of some finished fabrics which are inputs for further processing. In this event the decision in the case of Balkrishna Textile Pvt. Ltd. provided is squarely applicable to their case. I do not agree with the contention of the ld. Advocate with this regard. In fact a semi-finished goods may be input for some other unit, but that cannot be said to be input for the appellants own unit. Hence, the facts of the case of Balkrishna Textiles Pvt. Ltd. are not applicable to this case. In fact the cash discount, processing charges including the colours and chemical, transport, profit and margin are to be deducted from the value on which the appellant has taken the credit. Hence, the duty demand is confirmed against the appellant.

6. The appellant has not disclosed that how they have arrived at the value of fabrics to avail credit on 31st March, 2003. Hence, they have suppressed the facts from the Department. Accordingly, the extended period is invokable in this case. With regard to the penalty under section 11AC, when there is suppression of facts the penalty equivalent to duty is leviable on the appellants. But I find that the lower authorities have not given the

option to the appellant to pay 25% of the duty confirmed as penalty as per the proviso (1) & (2) of section 11AC of the Central Excise Act 1944. I give the option to pay 25% duty confirmed as penalty within 30 days of the issue of this order as held by the Hon'ble Delhi High Court in the case of K.P. Pouches. Failing which the appellant shall be liable to pay 100% duty as penalty. With these observations, appeal is dismissed.

[Dictated & Pronounced in the open Court].

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Anita