

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB(SM)

Appeal No. E/2407/00 - NB(SM)

Dated : 10/1/2001.

CEGAT
NEW DELHI
To,

M/s Navjeevan Textiles

28/6, Heavy Indl. Area,

Jodhpur (Raj.)

In the matter of :

M/s Navjeevan Textiles

Appellant

vs.

CCE Jaipur

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/50/2001/NB(SM)
Dated : 4-12-2000 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

Asstt. Registrar

1. CCE Jaipur

NB(SM)

2. CCE/EC/(Appeal) Jaipur

3. Chief Commissioner of Central Excise / Customs: Jaipur

4. Adv. / Consult. Shri Pradeep Jain, C.A.,
H-29, Shastri Nagar,
Jodhpur. (Raj.)

5. S.D.R

6. JCDR

7. Bar Association, CEGAT, New Delhi

8. Library, CEGAT, New Delhi

9. Director (Review), C.B.E.C. North Block, New Delhi

10. Guard File.

11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.

12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of
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13. M/s Lex Site Com. Ltd., Mumbai

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Asstt. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi**

APPEAL NO. E/2407/00 OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

459(KDT)CE/JPR-II/2000 dt 15.5.2000 DATED

PASSED BY..... Commissioner (Appeals), Office of the
Commissionerate Central Excise, Jaipur

Date of decision..... 4.12,2000

M/s Navjeevan Textiles..... APPELLANT (S)

Represented by Sh./Smt. Pradeep Jain, CA

VERSUS

C.C.E. Jaipur..... RESPONDENT (S)

Represented by Sh./Smt. R.C. Sankhla, JDR

CORAM :

V.K. Aggarwal, Member (T)

To be referred to the Reporter or not?

FINAL ORDER NO. A/50/01/NB (SPM)

Per..... V.K. Aggarwal, Member (T)

In this appeal, filed by M/s Navjeevan Textiles, the issue involved is whether the grey fabrics which was not accounted for in the statutory register was liable for confiscation and penalty was imposable on them.

2. Shri Pradeep Jain, Id. Chartered Accountant, submitted that the Central Excise officers visited the appellant's factory premises on 18.6.98 and found grey cotton fabrics

measuring 48944 mtrs^{received} by them for processing in excess of quantity mentioned in the register; that the Assistant Commissioner, under the Adjudication Order No. 26/99 dated 18.2.99, confiscated the same and ordered to be redeemed on payment of fine of Rs. 30,000/- and imposed a penalty of Rs. 15,000/- on the Appellate; that the entry could not be made due to non receipt of challan from the trader; that mere difference between physical stock and book stock would not lead to confiscation of goods. He relied upon the decisions in the cases of Garden Silk Mills Vs C.C.E., 1991(51) ELT 373; Balls and Cycles Ltd. Vs C.C.E., 1997(92) ELT 496 and Bhilai Conductors(P) Ltd Vs C.C.E., 2000(91) ECR 569(T). The learned Chartered Accountant finally submitted that the onus is on the Department to prove the intention to remove the goods clandestinely and that the Appellants had no intention to remove the goods clandestinely.

3. Countering the arguments, Shri R.C. Sankhla, Id. D.R., submitted that it is not disputed by the appellants that the grey fabrics was available in excess of the quantity mentioned in the Form IV Register; that Shri Naresh Mehta, Authorised signatory of the Appellants, in his statement dated 19.6.78, had admitted the non accounted of grey fabrics; that very fact of non accounted of goods in statutory registry is sufficient to show the intention to remove the goods without payment of duty. He also relied upon the decision in the case of Abir Chemicals Ltd. Vs C.C.E. Surat, 1998(102) ELT 406 (T) wherein the Tribunal upheld the confiscation and fine in respect of the excessable goods which were fully finished and

packed for marketing but not entered in R.G. I register.

4. I have considered the submissions of both the sides. It is not in dispute that the grey cotton fabrics was not entered into the statutory accounts. The Assistant Commissioner in the Adjudication Orders has clearly given his findings that the reasons adduced by the Appellants for not entering the receipt of the impugned goods in statutory register was not acceptable as the same could have been ^{entered} ~~entitled~~ in Form IV Register and if challan was not received, they should not have started processing of the said material. The facts in the Garden Silk Mills case are different in as much as the said case pertained to the goods manufactured by the assessee whereas in the present matter the impugned goods were received by the Applicants for the purpose of processing and these were required to be entered into Raw Material Account. SEcondly in Garden Silk Mills case the goods were not packed in boxes. Further the Appellate Tribunal upheld the imposition of penalty in that case also for non accounted in R.G.I Register of the goods manufactured by the assessee. The goods in question are also liable for confiscation as the same were not entered into the prescribed register as required by the Central Excise Rules. There is sufficient force in the submissions of the learned D.R. that non-accounted ^{of} goods only leads to removal of goods without payment of duty. The Tribunal in Abir Chemicals, supra case has upheld the confiscation

of excisable goods and imposition of fine. Similarly in C.C.E. Jaipur Vs Mittal Laminates (P) Ltd, 1999 (105) ELT 408(T), relied upon by the Commissioner (Appeals) in the impugned order, The Tribunal held that "once the goods have reached the stage of fully finished goods they are required to be recorded in the prescribed records. Since they were not recorded in the prescribed records, therefore, an attempt or otherwise for clandestine removal of the goods is not required to be proved. In the circumstances, goods were liable to confiscation and should have been confiscated." Accordingly I do not find any reason to interfere with the impugned order and reject the appeal.

(V.K. AGGARWAL)

Member (T)

PW

5.1.2001