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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 **06/07/2011**

Appeal No. E/142 /2006-144 /2006 - EX[DB]

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

To :
RAJASTHAN SPINNING & WEAVING MILLS LTD.
KHARIAGRAM PB NO. 28 P.O. GULABPUR
BHILWARA

**RAJASTHAN SPINNING & WEAVING MILLS LTD.** Appellant

Vs

**C.E. JAIPUR II** Respondent

I am directed to transmit herewith a certified copy of **Final order No.518-520/ 2011 EX[DB]** dated 29-6-11 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**
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
**MR.V. LAXMIKUMARAN**
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branc

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

**Excise Appeal No. 142-144/2006- Ex(BR)**

[Arising out of Order-in-Original No. 567-569 (HKS)/CE/JPR-II/2005 dated 18.10.2005 passed by the Commissioner of Customs & Central Excise (Appeals II), New Delhi ]

**For approval and signature**:

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

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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? : Yes

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M/s. Rajasthan Spinning & Weaving Mills Ltd. — Appellant

Vs.

Commissioner of Central Excise Delhi I — Respondent

**Appearance**:

Shri Ravi Raghavan & Shri Hemant Bajaj, Advocates for the Appellants
Shri B.K. Singh, Jt.CDR for the Respondent

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

Date of Hearing/decision : 29.6.2011

FINAL **ORAL ORDER NO. 518-520/2011-EX**

**Per M. Veeraiyan** (for the Bench):

These three appeals have been filed by the same appellant against the common order in appeal No. 567-569(HKS) CE/JPR-II/2005 dated 18.10.2005 .

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants are engaged in the manufacture of yarn and fabrics falling under Chapter Heading 55 of the CETA, 1985. They were clearing yarn from their spinning division for use in the manufacture of grey fabrics in the weaving division. Since the yarn so cleared for captive consumption did not have comparable value, the appellants applied for provisional assessment and paid duty on provisional basis. The Assistant Commissioner finalised assessments relating to the period July, 2000 to March 2001, April, 2001 to March, 2002 and April, 2002 to March 2003 and held that there were excess payments of Rs. 21,86,840/- , Rs. 22,26,216/- and Rs. 12,51,032/- respectively. Consequent to finalisation, the appellants preferred refund claims for the amounts excess paid. Show cause notices were issued alleging that the appellants have not produced evidence including documents referred to in Section 12A to establish the payment of duty of excise and that the incidence of such duty has not been passed on to other persons and therefore proposing rejection of the same. The appellants contested the noticees. Original authority sanctioned the claim of Rs.18,35,672/- relating the period

July, 2000 to February, 2001 and credited the said amount in the consumer welfare fund and rejected the claims for cash refund relating to other period on the ground that the appellants have not proved that they have not passed on the burden to the consumers and further that the processor was eligible for deemed modvat from 1.3.2001. Orders of the original authority stand upheld by the Commissioner (Appeals).

4. Learned Advocate for the appellants submits that the yarn was cleared from the spinning division to the weaving division for the purpose of manufacture of grey fabrics and the grey fabrics were subsequently sent to the processors. The processors were working under the Compounded Levy Scheme initially for some period and later they were paying duty on ad valoram basis from March, 2001 and were availing deemed credit. As the assessment of yarn was provisional, the officer finalising provisional assessments should have adjusted the excess paid duty towards short payment as envisaged under Rule 9(b) (v) of the Central Excise Rules, 1944 and later under Rule 7 of the Central Excise Rules, 2002. The authorities below have failed to appreciate that the cost sheets prepared by the company in respect of yarn and fabrics did not include the excise duty component and therefore, erred in holding that they have passed on the duty burden. Further, the grey fabrics was cleared without payment of duty and duty paid on the yarn was not availed as credit by the weaving division. The value of grey fabrics declared by the weaving division while clearing to the independent textile processor also did not include the duty paid on yarn.

5. The learned Jt. CDR reiterated the findings and reasoning of the Commissioner (Appeals). He added that the appellants have failed to satisfy that they have not passed on the burden of duty and therefore, there is no case made out for interfering with the orders of the Commissioner (Appeals).

6. We have carefully considered the submissions from both sides and perused the records. Undisputedly, assessments were provisional and the appellants have paid excess duty and raised invoices indicating the higher duty so paid while transferring the materials to the weaving division. The claim that for the purpose of valuation of yarn they have not included the duty amount paid to the Central Government, does not sound reasonable. When the yarn is used for manufacture of grey fabrics and when grey fabrics were sent to the independent processors, the claim that they have not included the value of excise duty paid for deterimining the value of fabrics also does not stand to reason. In the case of captive consumption and transfer of material for job work, the practice adopted by the appellant in not including the duty amount in the cost sheet cannot be the deciding factor to determine whether the appellant has passed on the burden to the customers. Apparently, the first sale by the appellants was that of processed fabrics as yarn and grey fabrics were not sold by them. Duty paid on the yarn naturally has to be included in determining the cost of the yarn irrespective of the fact whether the grey fabrics was subject to excise duty or not. It is also not disputed that the independent processors have taken deemed credit while discharging duty on processed fabrics with effect

from 1.3.2001. Therefore, the view taken by the authorities below that deemed credit taken by independent processors related to duty paid on yarn also and therefore, the excess duty paid is deemed to have been passed on to the job worker cannot be faulted in the absence of evidence to the contrary produced by the appellants. It is not disputed that during the relevant period, the refund arising out of finalisation of provision assessment is also subject to provisions of unjust enrichment and that the burden to prove that they have not passed on the duty incidence is on the claimant.

7. In view of the above, we do not find any valid reason to interfere with the order of the Commissioner (Appeals) .

8. The appeals are, therefore, rejected.

( Justice R.M.S. Khandeparkar )
President

( M. Veeraiyan )
Member(Technical)

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