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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

Appeal No. E/1134/2005 - EX[DB] Date **26/07/2011**

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

To :
C.C. LUCKNOW
5TH AND 11TH FLOOR, KENDRIYA BHAWAN,
SECTOR -H, ALIGANH, LUCKNOW 226024.

C.C. LUCKNOW Appellant
Vs
GALAXY INDO FAB LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.647/ 2011 EX|DB|** dated 25-7-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
GALAXY INDO FAB LTD.
P.O.AUNG G.T.ROAD FATEHPUR

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

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 Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:21.04.11
Date of decision:

Excise Appeal No.E/1134 of 2005-EX (BR)

[Arising out of Order-in-Appeal No.55-CE/APPL/KNP/2004 dated 01.10.2004 passed by the Commissioner of Central Excise (Appeals), Ghaziabad].

CCE, Lucknow Appellant

Vs.

M/s.Galaxy Indo Fab Ltd. Respondent

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see 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?

Appearance: Rep. by Shri S.R. Meena, DR for the appellant.
Rep. by Ms.Sukriti Das, Advocate for the respondent.

CORAM: **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. 647/2011-EX./Dated: 15/7/11

Per Rakesh Kumar

The facts leading to this appeal filed by the Revenue are, in brief, as under:-

1.1 The respondent are engaged in the manufacture of processed fabrics, pillow cushions and quilted fabrics chargeable to central excise duty. Their factory was visited by the jurisdictional central excise officers on 18.08.1998 and the stock of grey fabrics, grey fabrics in process and the finished products was checked. As regards the grey fabrics in stock, as against the recorded balance in Form-IV register of 1,49,089 sq.mtrs. of fabrics, the actual stock of fabrics was found to be 1,46,600 sq.mtrs. and thus, there was shortage of 2489 sq.mtrs. of fabrics. Shri Deepak Srivastava, Excise Clerk and Shri M.P. Agarwal, Managing Director of the company could not give any satisfactory explanation and hence, the officers were of the view that this much quantity of grey fabrics after being processed had been cleared clandestinely without payment of duty.

1.2 As regards the "grey fabrics in process", as per the appellant's records, 1,91,975 sq.mtrs. of grey fabrics was supposed to be in process against which on physical verification, only 127900 sq.mtrs. could be found and as such there was shortage of 64075 sq. mtrs. of grey fabrics. Since the explanation of Shri M.P. Agarwal, Managing Director of the respondent company for ~~...~~ shortage was not ~~...~~ found to be satisfactory, the central excise officers were of the view that this much quantity of the fabrics had been removed after processing in a clandestine manner without payment of duty. The duty involved on this quantity was Rs.2,30,670/- and the duty involved on the processed fabrics made out of 2489 sq.mtrs. of grey fabrics found short was Rs.8960/-.

1.3 The officers also checked the stock of finished goods and it was found that there was 131719.30 sq.mtrs. of polyester viscose shirting but the stock as per the RG-1 Register was 84316 sq.mtrs. of polyester viscose shirting. However, on close scrutiny of the records, it was found that production of 84,316 sq. mtrs. of P.V. Shirting was shown to have been manufactured by the respondent in a single day i.e. 17.08.98 which caused suspicion, as, as per the production slips available, the total production was only 4316 sq.mtrs. In this regard, in the statement of Shri Deepak Srivastava, Excise Clerk, was recorded under 14 of the Central Excise Act, 1944 who stated that, in fact, on 17.08.98 only 4316 sq.mtrs. of P.V. Shirting had been produced and recorded in the RG-I Register and immediately after visit of the central excise officers in the factory, he was directed by Shri M.P. Agarwal, Managing Director to add the figure of 8 before the figure of "4136" making it "84136", which he did, that Shri M.P. Agarwal assured him to provide production slips for the excess production shown in the register within two hours, that no packing of the fabrics had been done in the factory after visit of the officers on 18.08.98, which meant that there is no production in the factory on

18.08.98, and that after looking at the entries in the RG-I register fromd 22.04.98 onwards, he could say that in the past there had never been such a huge production in a single day. The officers were, therefore, of the view that the actual production recorded in the RG-I register at the time of their visit was 4316 sq. mtrs and to cover up the shortage, figure "8" was hurriedly added before the figure of "4316" sq.mtrs. and that in view of this, there was actual unaccounted balance of 127403.30 sq. mtrs of P.V. Shirting vis a vis the balance in the RG-I register. The officers, therefore, seized the excess stock on the reasonable belief that the same would be liable for confiscation under the provision of Central Excise Rules.

1.4 In view of the above facts, a show cause notice dated 20.01.99 was issued to the respondent for –

(a) duty demand of Rs.2,30,670/- in respect of shortage of 6475 sq.mtrs of grey fabrics along with interest at the applicable rate under Section 11 AB;

(b) demand of duty amounting to Rs.8960.40 in respect of shortage of 2489 sq.mtrs. of man made fabrics along with interest on it under Section 11 AB;

(c) confiscation of 1,22,403/- sq.mtrs. of excess PV Shirting valued Rs.22,93, 259/- and

(d) imposition of penaty on the appellant under Rule 173Q as well as Section 11 AC of the Central Excise Act, 1944.

1.5 The show cause ntice was adjudicated bythe Addl. Commissioner vide Order-in-Original dated 13.11.2000 vide which-

(a) duty demands of Rs.2,30,670/- and Rs.8960/- were confirmed along with interest,

(b) penalty of Rs.2,40,000/- was imposed on the appellant under Section 11 A and;

(c) seized excess stock of PV Shirting was ordered to be confiscated and since the same had been provisionally released on execution of bond, the respondent were asked to pay an amount of Rs.3,33,500/- toward redemption fine.

1.6 Against the above order of the Addl. Commissioner, the respondent filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide Order-in-Appeal No.550-CE/APPL/KNP/2004 dated 01.10.2004 set aside the order of confiscation of the PV Shirting and order of redemption fine. As regards the duty demand of Rs.8,960/- on the shortage of 2489 sq.mtrs., the same was set aside and the duty demand of Rs.2,30,670/- on alleged shortage of 64075 sq.mtrs. of grey fabrics, was reduced to Rs.60,018/-. Penalty imposed on the respondent was also reduced to Rs.70,000/-. Against this order of the Commissioner (Appeals), the Revenue has come in appeal challenging the Commissioner (Appeals)'s order setting aside the order of confiscation of the seized PV Shirting.

2. Heard both the sides.

2.1 Shri S.R. Meena, ld. Departmental Representative assailed the impugned order regarding setting aside the confiscation of the seized goods by reiterating the grounds of the appeal in the Revenue's appeal and emphasised that at the time of officer's visit to the factory, the quantity recorded in the RG-I Register was only 4316, that Shri Deepak Srivastava, Excise Clerk of the respondent company in his statement dated 18.08.1998 has clearly admitted that the figure "8" was added before the figure of "4316" in the RG-I Register immediately after the officer's visit to the factory on the instructions of Shri M.P. Agarwal, Managing Director, that Shri Deepak Srivastava has also admitted that on 17.08.98 the actual production of PV Shirting was 4316 only and in this regard, he had produced the production slips also, while on the instructions of Shri M.P. Agarwal, Managing Director, production of 84316 Sq.Mtrs. has been shown on that day, which is not possible, that unaccounted production of PV Shirting is 1,27,403 sq.mtrs. which represents several days' production, that this production had not been recorded in the RG-I Register with intention to clear the same clandestinely and at the time of officer's visit to the factory, the figure "8" was immediately added before the figure of "4316" in respect of the stock of PV Shirting in the RG-I Register to conceal the fact of unaccounted production, that since non-recording of the production in RG-23A- Part-I Register stands established, the unaccounted goods were liable for confiscation and the respondents were liable for penalty and that the order of confiscation and penalty has been wrongly set aside by the Commissioner (Appeals).

2.2 Ms. Sukriti Das, Advocate, ld. Counsel for the respondent, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that as observed by the Commissioner (Appeals), stock of 47403.30 sq.mtrs. of PV Shirting could not be treated as finished as the same was found wrapped in polythene and was not required to be entered in RG-I Register, that once this quantity was excluded, the actual stock of PV Shirting was 84316 sq.mtrs. and this is figure, which had been recorded in the RG-I Register, that since this much production has been recorded in the RG-I Register the respondent became liable to pay duty in respect of the same and it is not material as to whether initially the figure of "4316" had been written and figure "8" was added before the figure "4316" later on and that in view of this, there is no infirmity in the impugned order.

3. We have carefully considered the submissions from both the sides and perused the records. The dispute pertains to August, 1998 when Central Excise Rules, 1944 were in force. In terms of the provisions of Rule 53 of the Central Excise Rules, 1944, every manufacturer shall maintain a stock account of the goods manufactured by him in a prescribed format. The format prescribed for maintaining the stock account of the finished goods manufactured is RG-I Register, in which the opening balance for the day, quantity manufactured during the day,

quantity cleared on payment of duty, and the closing balance and other details are required to be mentioned. Under Rule 173 (1)(b) of the Central Excise Rules, a manufacturer, who does not account for the goods manufactured by him, shall be liable for penalty of an amount not exceeding three times the value of the goods or Rs.5,000/- whichever is greater and such unaccounted goods shall be liable for confiscation. The point of dispute in this case is as to whether there was unaccounted stock of finished PV Shirting in the respondent's factory at the time of visit of the central excise officers to the factory on 18.08.1998. The department's allegation is that at the time of visit of the central excise officers to the factory on 18.08.98, the RG-I Register contained entries regarding production and clearances of the goods only upto 17.08.98 and the balance of PV Shirting recorded in the RG-I Register was 4316 sq.mtrs., while the actual balance available in the factory at that time was 1,31,719.30 sq.mtrs. It is also alleged that as soon as the officers' team entered in the factory on the instruction of Shri M.P. Agarwal, Managing Director of the respondent Company, Shri Deepak Srivastava, Excise Clerk, immediately added figure of '8' before the figure of 4316. It is on this basis that the department alleged that the production recorded in the RG-I Register at the time of their visit to the factory, was 4316 sq.mtrs only against the stock of 1,31,719.30 sq. mtrs. of PV Shirting. The Commissioner (Appeals) has held that stock of 47,403.30 sq.mtrs. of PV Shirting wrapped in polythene should not be treated as finished goods and if it is not counted as finished goods, the stock available would be 84316 sq.mtrs and this is what had been recorded in the RG-I Register and it is not material that the figure of 8 before the figure of 4316 was added immediately after the officers' visit to the respondent's factory.

4. What is punishable under Rule 173Q(1)(b) is non-accountal of the finished goods in the RG-I Register and if such non-accountal of the finished goods was there, to the extent the finished goods were unaccounted, the same would be liable for confiscation and the respondent would be liable for penalty. We find that at the time of officer's visit to the respondent's factory, the stock of PV Shirting in the RG-1 Register was shown as 84316 Sq.mtrs. and the entire production of PV Shirting had been shown on 17.08.98, which is impossible-more so when the production slips pertaining to the production of PV Shirting on 17.08.1998 totalled only upto 4316 sq.mtrs. from which it is clear that this was the actual production of 17.08.98, which had originally been recorded in the RG-I Register and immediately after the officers' visit, the same was hurriedly changed to "84316". Shri Deepak Srivastava, Excise Clerk in his statement recorded under Section 14 of the Act has clearly stated that the figure "8" was added before the figure "4316" immediately after the officers' visit to the respondent's factory and this was done on the instruction of Shri M.P.Agarwal, Managing Director of the respondent company who promised to send the production's slips to justify that much production on 17.08.98. Though Shri Agarwal denies

having given any such instruction, we are of the view that statement of Shri Deepak Srivastava in this regard is a true statement. Even if the Commissioner (Appeals)'s findings that the production of 47403 sq.mtrs. of PV Shirting wrapped in polythene is not to be treated as finished goods is accepted, there was unaccounted production to the tune of 80,000- sq.mtrs, as against the stock of 84316 sq.mtrs of PV Shirting, the stock of PV Shirtings actually recorded in the RG-I Register was only 4316. We, therefore, hold that the Commissioner (Appeals)'s findings that there was no excess stock in RG-I Register and there was no contravention of the Rule 53 of the Central Excise Rules, 1944 is not correct and the Commissioner (Appeals)'s order setting aside the order of confiscation and penalty on this count is not sustainable. The same is set aside and in this regard, the order of the original adjudicating authority regarding confiscation of the goods is restored. The Revenue's appeal is accordingly allowed.

[Order pronounced in open court on 25th/7]/11

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Ckp.