ELEGRAM : CEGCANAL
ebsite : www.cestat.gov.in

REGISTERED / AD
Email : cestat08@gmail.com

# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**

**EXCISE APPEAL BRANCH**

Appeal No. E/1242/2007 - EX[DB] Date **18/04/2012**

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

To :
M/S U.P.STATE SPINNING CO. LTD.
VASTRA BHAWAN, SHADRA NAGAR, KANPUR.

**M/S U.P.STATE SPINNING CO. LTD.** Appellant

Vs

**C.C.E ALLAHABAD** Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/450 **2012** **EX[DB]** dated 13-3-2012 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 ALLAHABAD**
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
**MR.L.P ASTHANA & MS. NEHA GULATI ADV.**
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

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-3
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

Assistant Registrar
(Excise Appeal Branch)

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

**COURT-I**

**Date of hearing/decision 13.3.2012**

**Central Excise Appeal No.1242 of 2007**

Arising out of the order in original No. MP(77)/2005/03 dated 19.01.2007 passed by Commissioner, Central Excise & Customs, Allahabad.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

| | | |
|---|---|---|
| 1 | Whether Press Reporter may be allowed to see the Order for publication as per Rule 25 of the CESTAT (Procedure) Rules, 1982? | |
| 2 | Whether it should be released under Rule 26 of 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 U.P. State Spinning Co. Ltd. Appellants

Vs.

CCE, Allahabad Respondent

Present Shri L.P. Asthana with Ms. Neha Gulati, Advocates for the appellants.

Present Shri K.M. Tiwari, Special Advocate for the respondent.

FINAL ORDER No. A/450/2012-EX (BR)

Per Justice Ajit Bharihoke: (Oral)

This appeal is directed against the order-in-original passed by the Jurisdictional Commissioner of Central Excise, Allahabad confirming the duty of Rs. 56,87,665/- under Section 11A of the Central Excise Act, 1944 against the appellant and also the penalty of equal amount under Section 11AC of the Act as also the interest under Section 11AB of the Act.

2. At the outset, we may mentioned that this is second round of litigation. Briefly put relevant facts for the disposal of this appeal are that the appellant is U.P. State Government undertaking engaged in the manufacture of cotton and synthetic yarn. The appellant claims to have supplied cotton and synthetic yarn to 28 Co-operative Societies against the orders received from National Handloom Development Corporation (NHDC). Payment for which was made by the NHDC by cheques drawn on its bank account. During the relevant period, Notifications No. 5/98-CE and 5/99-CE were in operation which provided for complete exemption from excise duty to the manufacturer subject to the condition that the goods were purchased through the NHDC for supply to the cooperative society involved in production of handloom and payment for which was to be made by cheque. The appellants for supplies of yarn to co-operative societies during the period August, 1998 to January 2001 claimed exemption and did not pay the excise duty on the clearances made to cooperative societies.

3. The department was of the view that benefit of exemption notifications was not available to the appellants for the reason that he had not obtained the certificates of utilization by co-operative societies in terms of notifications from NHDC at the time of clearance of the goods. Accordingly, investigation was done to verify the facts and it was allegedly found that two of the cooperative societies to whom the appellants claimed to have supplied yarn under exemption notifications were not in existence and in respect of

six of the societies and investigation allegedly revealed that some of the goods under invoices did not reach those cooperative society. Thus, a show cause notice dated 14.07.2003 was issued to the appellants calling upon him to show cause as to why the duty demand to the extent of Rs. 56,87,662.66 be not confirmed against him. This demand was raised in respect of the supplies allegedly made to all the 28 societies mainly for the reason that requisite certificate from NHDC were not provided at the time of clearance of the goods.

4. The appellants contested the notice and the adjudication process ultimately culminated into confirmation of the duty demand of Rs. 56,87,662/- with interest thereof and the equal amount of penalty vide Order-in-original dated 29.12.2003.

5. Feeling aggrieved of the aforesaid order the appellants preferred an appeal. The Tribunal vide final order No. 101/05-C dated 12.01.2005 accepted the appeal and remanded the matter for a fresh decision and made the following observations:

> "4. We have heard both sides and gone through the record. So far as the first ground is concerned i.e. the late production of the certificates from the NHDC i.e. after the clearances, whereas it was required to be produced at the time or before the clearance, in terms of above said notifications, the same, in our view, is not tangible, in view of the ratio of the law laid down in the case of Rajasthan Rajya Sahkari Spg. & Wvg. Mills Federation vs. CCE, Jaipur reported in 2002 (140) ELT 235 and Bajaj Tempo Ltd. vs. CCE, Indore 2004 (165) ELT 323. Therefore, the benefit of the abovesaid notification could not be denied to the appellants on that score.
>
> 4. This takes us to the second ground. From the record, we find that the orders for the supply of the cotton yarn were placed with the appellants by the NHDC and not by any individual society. In those orders, the NHDC only directed the appellants to dispatch the goods

directly to a society named therein. Accordingly the appellants supplied the goods under intimation to the NHDC. The payment for these goods was made by the NHDC through the draft/ cheque to the appellants and not by the society to whom the goods were dispatched. The ground that two societies did not exist and that the other four did not utilize the goods on handlooms, in our view, has never been properly examined, keeping in view the wordings of the above said notifications. We do not find that if any of these notifications in question, cast duty on the appellants to see that the goods supplied to a particular society were utilized on handlooms. However, the adjudicating authority has not examined this question. Besides this, the appellants have also produced before us the additional evidence in order to prove that the societies, which are alleged to be non-existing, in fact, existed at the time of supply of the goods to them. The appellants have produced the certificates of the NHDC, but all these documents require scrutiny and examination by the adjudicating authority as question of fact is involved therein.

5. The learned adjudicating authority, in our view, has not rendered any cogent reason for disallowing the benefit of the exemption notifications in respect of other clearances barring to the six societies in dispute. This aspect also deserves to be re-examined by the adjudication authority".

6. Commissioner, Allahabad pursuant to the remand order passed the order-in-original dated 19.01.2007 and reconfirmed the duty demand of Rs. 56,87,665/- with interest and equal amount of penalty which order is subject matter of this appeal.

7. Ld. Counsel for the appellants has submitted that the impugned order is not sustainable in law for the reason that despite of the categoric finding by the Tribunal that late production of utilization of certificate from NHDC after the clearance of the goods could not be taken as a ground to deny the benefit of notifications No. 5/98 and 5/99. The adjudicating authority has taken a contrary view as if he was sitting in appeal over the order of the Tribunal. Ld. Counsel further submitted if at all the department was aggrieved of aforesaid finding of the Tribunal the remedy was to file an

appeal against the order of the Tribunal which remedy has not been availed. Therefore, the said finding of the Tribunal has become final and the Commissioner while rehearing the appeal pursuant to remand order, had no right to overrule the finding of the Tribunal. Second contention of the ld. Counsel is that the order-in-original is not a speaking order and perusal of this order would show that the Commissioner has confirmed the demand raised by show cause notice without referring to facts and evidence learned Counsel for the appellant has thus summed up the impugned order is not sustainable in law, as such appeal be accepted and impugned order be set aside.

8. Sh. K.M. Tiwari, Special Counsel appearing on behalf of the respondent submits that the impugned order cannot be faulted. According to him Notification No. 5/98 dated 2.6.1998 and 5/99 dated 28.02.1999 categorically stipulates that exemption would be available to the suppliers of yarn only in the event of production of the utilization certificate issued by an authorized officer of NHDC. He submits that in the instant case, certificate which was produced by the appellants in the Tribunal have been issued on the subsequent date to i.e. almost 5 years after the clearance of the goods and those certificates are not even signed by authorized officer. It is further submitted that the requirement of exemption notification is that certificate must certify that the yarn being supplied to the co-operative society would be used only for the manufacture of handloom product. Regarding the second contention of the appellant, it is submitted that the impugned order of the Commissioner is explicit and contain all the details. Ld. Special Counsel for the respondent further submits that the order of the Commissioner cannot

be faulted as it refers to the local investigation done by the Deputy Commissioner regarding non existence of two societies and also regarding non supply of goods in respect of certain invoices to other those societies mentioned in the table given in the impugned order.

9. We have considered the rival contentions and perused the record. Vide final order No. 101/05-C dated 12.01.2005, the Tribunal remanded the matter back to the adjudicating authority for fresh decision in the light of the observations made in the order. Perusal of the final order would show that, as regards the effect of late production of certificates from NHDC after the clearance of goods, the Tribunal has returned a categoric finding that merely because of failure to file certificate from NHDC before the clearance of the yarn the benefit of the Notification No. 5/98-CE and 5/99-CE could not be denied to the appellants. Admittedly, no appeal in respect of the said finding was filed by the department. This imply that finding of the appellant has become final. However, the adjudicating authority while deciding the matter afresh after remand has given a contrary finding to the effect that because of the failure to produce NHDC certificate before the clearance of the yarn the appellant is not entitled to the benefit of those notifications. The effect of the said order-in-original amounts to countermanding /reversing the decision of the Tribunal given vide final order No. 101/05-C which is not permissible under law as a inferior authority in judicial hierarchy has no right / jurisdiction to overturn the finding of superior authority.

11. Coming to Second limb of the argument, perusal of the impugned order-in-original would show that while confirming demand in respect of

supplies made to all the societies in total defiance to the order of the Tribunal. The Commissioner have nowhere mentioned that the certificates subsequently produced by the appellants were defective inasmuch as those certificates did not mention that the yarn supplied was meant for use in manufacture of handloom product. Further, perusal of the impugned order would show that it is cryptic non speaking order and the conclusion have been drawn by the Commissioner without any reference to the evidence. On reading of the order it is not clear on the basis of what evidence the conclusion have been drawn. For example, regarding two allegedly non-existent societies, the Commissioner has observed that concerned Deputy Commissioner, Muzzaffarnagar and Assistant Commissioner, Moradabad have informed that on local investigation those two co-operative societies were not found to be existence, but the finding do not disclose the details furnishing basis of said report. Similarly, regarding six other societies where allegation is that goods in respect of some of the invoices were never supplied to those societies, no evidence to support the aforesaid finding has been discussed. The adjudicating authority despite of the fact that the matter was remanded back for fresh adjudication based on facts has failed to discuss the factual evidence for his conclusion. Since the impugned order is a non-speaking order, we find it difficult to sustain it. Accordingly, the appeal is accepted and the matter is remanded again to the adjudicating authority to decide it afresh on the basis of the evidence on record. It is made clear that while arriving at a conclusion, the adjudicating authority will give a reasoned order referring to the evidence which prompted to come to the conclusion. Needless to say that the appellant shall be given an opportunity to produce evidence in support of his defence and the Commissioner will dispose of the matter at the earliest. Appeal is disposed of accordingly.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant