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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/2340/2005-EX[DB]

Dated: **29/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E DELHI-III GURGAON
Udyog Minar, Vanijya Nikunj, Udyog
Vihar, Phase-V, Gurgaon (Haryana)

C.C.E DELHI-III GURGAON (Appellant)

VS

MAHAVIR TEXTILES (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/985/2012-EX[DB]** dated **28/08/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
MAHAVIR TEXTILES
38, KM Delhi Jaipur Highway Gurgaon

2. Advocate(s) / Consultant(s):

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 Publications 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

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Assistant Registrar
EXCISE Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 17/07/2012.
DATE OF DECISION : 28/8 /2012.

Excise Appeal No. 2340 of 2005

[Arising out of the Order-in-Appeal No. 203/AKG/GGN/2005 dated 11/04/2005 passed by The Commissioner (Appeals), Central Excise, Delhi – III, Gurgaon.]

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

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 would 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 Department Authorities?	:

CCE, Delhi – III, Gurgaon — Appellant

Versus

M/s Mahavir Textiles — Respondent

Appearance

Shri Nagesh Pathak, Authorized Representative (DR) – for the appellant.

Shri Mayank Garg, Advocate - for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. A/985/2012-Ex(BA) Dated : ________

Per. Rakesh Kumar :-

The facts leading to this appeal by Revenue, in brief, are as under.

1.1 M/s Mahavir Textiles located at 38 KM Delhi Jaipur Highway, Behrampur Road, Khandsa, Gurgaon owned by one Shri Ravinder Jain manufacture unprocessed cotton corduroy cloth chargeable to Central Excise duty under sub-heading 5801.21 of the Central Excise Tariff. M/s Mahavir Textiles is availing of SSI exemption under Notification No. 8/2000-CE dated 1/3/2000. Shri Ravinder Jain owns another unit name M/s H.B. Exports also engaged in manufacture of goods specified in SSI exemption Notification No. 8/2000-CE, but in respect of the second unit i.e. M/s H.B. Exports full duty was being paid since the beginning of the financial year and Cenvat credit was being availed. The department was of the view that during the financial year 2000-2001 for determining the eligibility of the clearances of the specified goods by M/s Mahavir Textile for concessional rate of duty under SSI exemption, the clearances of both the units owned by Shri Ravinder Jain would have to be clubbed together. Since, the respondent unit had availed of SSI exemption independently, the department was of the view that there was short payment of duty to the tune of Rs. 3,08,681/- during the period from August 2000 to September 2000. It is on this basis that a show cause notice dated 26/2/01 was issued to the respondent unit for recovery of allegedly short paid duty as mentioned above alongwith interest and also for imposition of penalty on the appellant under Section 11AC of Central Excise Act, 1944 Rule 173Q of Central Excise Rules, 1944. The above show cause notice was adjudicated by the Joint Commissioner vide order-in-original dated 4/4/03 by which the duty demand as made in the show cause notice was confirmed alongwith interest and while penalty of equal amount was imposed on the respondent - M/s Mahavir Textiles, another penalty of Rs. 3,00,000/- was imposed on the respondent under Rule 173Q of Central Excise Rules. The Joint Commissioner in this order held that for determining the eligibility of the clearances made by the respondent unit during 2000-2001 for concessional rate of duty under SSI exemption notification, the clearances of the respondent unit would be required to be clubbed with the clearances of M/s H.B. Exports, which is another unit owned by the respondent. On appeal to Commissioner (Appeals), this order of the Assistant Commissioner was set aside and the appeal was allowed. Against this order of the Commissioner (appeals), this appeal has been filed by the Revenue.

2. Heard both the sides.

3. Shri Nagesh Pathak, the learned Departmental Representative, assailed the impugned order by reiterating the grounds of appeal in the Revenue's appeal and emphasised that in terms of Clause 2 (V) of the Notification No. 8/2000-CE dated 1/3/2000, when a manufacturer clears ~~a~~ specified goods from one or more factories, the exemption [illegible] in his case shall apply to the aggregate value of clearances mentioned against each of the

serial number table and not separately for each factory, that since the respondent owns another unit M/s H.B. Exports, which also manufactures specified goods, in view of the clear provisions of Clause 2 (V) of the SSI exemption notification, for the purpose of determining the applicable rate the clearances of two units will have to be clubbed together irrespective of whether the other unit is availing of SSI exemption notification or not. He, pleaded, that the judgments relied upon by the Commissioner (Appeals) are not applicable to the issue involved in this case.

4. Shri Mayank Garg, Advocate, the learned Counsel for the respondent, defended the impugned order by reiterating the findings of the Commissioner (Appeals) in it and cited the judgments of the Tribunal in the cases of **CCE, Meerut I vs. Janardan Plywood Industries Ltd.** reported in **2010 (261) E.L.T. 1019 (Tri. - Del.)** and **Polyinks Pvt. Ltd. vs. CCE, Delhi – IV, Faridabad** reported in **2004 (165) E.L.T. 335 (Tri. – Del.)**, wherein the Tribunal has held that when a ~~[illegible]~~ manufacturer has more than one unit, it is permissible for one unit to pay normal duty and avail Cenvat credit and other unit to avail SSI exemption and that it is not compulsory that either both the units should avail SSI exemption or both the unit should pay a normal duty. He, therefore, pleaded as such there is no infirmity in the impugned order and the ratio of these judgments is squarely applicable to the facts of this case.

5. We have considered the submissions from both the sides and perused the records.

6. There is no dispute about the fact that the respondent unit and M/s H.B. Exports, both manufacturing the goods specified in SSI exemption Notification No. 8/2000-CE, are owned by same person and thus both the units can be said to be the units of the same manufacturer. While the respondent unit was availing of SSI exemption No. 8/2000-CE during 2000-2001, the other unit M/s H.B. Exports during the same financial year 2000-2001 was paying normal duty and availing Cenvat credit. Under Notification No. 8/2000-CE the first clearances up to the aggregate value not exceeding Rs. 50,00,000/- made on or after 1st day of April in a financial year have nil rate of duty and in respect of clearances of aggregate value of Rs. 50,00,000/- made immediately after the first Rs. 50,00,000/- clearances, the rate of duty specified is 5% adv. The dispute is as to when same manufacturer owns more than one factory whether each unit would be individually be eligible for exemptions as specified in the Notification No. 8/2000-CE or the exemption specified in the Notification No. 8/2000-CE would be available only on the aggregate value of clearances of all the units owned by the same manufacturer. In this regard, Clause 2 (V) of the notification states as under :-

> "where a manufacturer clears the specified goods from one or more factories, the exemptions in this case shall apply to the aggregate value of clearances mentioned against each of the serial numbers in the said table and not separately for each factory".

7. Thus, when a manufacturer has more than one unit manufacturing the goods specified under Notification No. 8/2000-CE, the clearances eligible for nil duty which are the first clearances upto Rs. 50,00,000/- from 1st April in the financial year would be the aggregate value of the clearances from all the units and not the first clearances in a financial year upto Rs. 50,00,000/- in each unit and similarly the concessional rate of 5% adv. prescribed for the next clearances of value of Rs. 50,00,000/- would be for the aggregate value of the clearances of all the units and not each units separately. Thus, in this case for calculating the clearances eligible for nil rate of duty i.e. first clearances in the financial year upto Rs. 50,00,000/- the clearances of both the units would have to be clubbed together and the same would have to be done for the next slab. The ratio of the judgments of the Tribunal in the cases of **CCE, Meerut I vs. Janardan Plywood Industries Ltd.** (supra) and **Polyinks Pvt. Ltd. vs. CCE, Delhi – IV, Faridabad** (supra) is that when a manufacturer owns more than one unit, each manufacturing the goods specified in the SSI exemption notification, it is not necessary that each unit should either avail of exemption or stay out of exemption. In our view, the ratio of Tribunal's judgment in these cases is not applicable to this case as the issue involved in this case is totally different. We are, therefore, of the view that the impugned order is not correct and same is liable to be set aside. The impugned order, therefore, is set aside and the order-in-original passed by the Joint Commissioner is restored with the modification that the separate penalty of Rs. 3,00,000/- imposed

on the respondent under Rule 173Q is set aside, as for this penalty, there is no justification when penalty equal to the duty demand confirmed has been imposed under Section 11AC.

(Order pronounced in open court on 29/8 /2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK