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

Appeal No. E/ 810, 1399-1402/2009-EX[DB]

[Arising out of Order-in-Appeal No. 252-253(DK) CE/JPR-II/2008, dated 001.01.2009, passed by the Commissioner of Central Excise, Jaipur]

**Kanchan Processors Pvt. Ltd.
Kanchan Woltex (P) Ltd.
Shri Nilesh Bangar, Director
Shri Jayesh Bangar, Director ...Appellants**

Vs.

C.C.E. & S.T.-Jaipur-II ....Respondent

Appeal No. E/911/2009-EX[DB]

CE & ST- Udaipur .... Appellants

**Vs.
Kanchan Processors Pvt. Ltd. ..... Respondent**

Appearance:

Sh. B. Garg, Advocate for the Appellant
Sh. Amresh Jain, DR for the Respondent

CORAM:

**Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Date of Hearing: 15.11.2016

Date of Pronouncement: 30.03.2017

FINAL ORDER NO. __52663-52668/2017-Ex(DB)

Per Ashok K. Arya:

These are total six appeals. Four appeals are by the following:

i. M/s Kanchan Processors (P) Ltd,

ii. Sh. Nilesh Bangar, Director in M/s Kanchan Processors (P) Ltd,

iii. M/s Kanchan Wooltex (P) Ltd, and

iv. Sh. Jayesh Bangar, Director in M/s Kanchan Wooltex (P) Ltd,

They have filed these appeals (bearing Appeal Numbers E/1399, 1400, 1401 and 1402/2009) against the Order-in-Original No. 13/2009 dated 26.02.2009 with the prayer that impugned Order-in-Original dated 26.02.2009 be set aside.

1.1 In the said Order-in-Original dated 26.2.2009, the demand of Central Excise Duty of Rs 86,01,121/- along with interest has been confirmed. This Order-in-Original dated 26.2.2009 imposes equivalent penalty on the assessee namely Kanchan Processors Pvt Ltd. The impugned order dated 26.02.2009 imposes penalties of Rs 35 lakh on M/s Kanchan Wooltex Pvt Ltd and of Rs 20 lakhs each on Shri Nilesh Bangar, Director of M/s Kanchan Processors Pvt Ltd and on Shri Jayesh Bangar, Director of M/s Wooltex Pvt Ltd.

2. In case of remaining two appeals, one has been filed by M/s Kanchan Processors (P) Ltd (bearing No. E/810/2009) against Order-in-Appeal No. 252-253/2008 dated 19.12.2008 passed by Commissioner of Central Excise (Appeals), Jaipur II.

2.1 Remaining last appeal (no. E/911/2009) is cross appeal filed by the Revenue (CEE, Jaipur II) against same Order-in-Appeal No. 252-253/2008 dated 19.12.2008 passed by Commissioner , Central Excise (Appeals) Jaipur II.

3. All appeals have been represented by the ld. Advocate, Shri Bipin Garg and the Revenue has been represented by ld. AR, Shri Amresh Jain.

4. Firstly, we take up the appeals [No. 810 & 911], which have been filed by the assessee M/s Kanchan Processors Pvt Ltd and cross appeal filed by the Commissioner Central Excise, Jaipur II respectively against the common Order-in-Appeal no. 252-253/2008 dated 19.12.2008 passed by Commissioner (Appeals), Jaipur.

4.1 Brief facts are that the assessee namely M/s Kanchan Processor Pvt Ltd is engaged in the process of manufacture of processed man made Fabric (PMMF) falling under chapter 55 of

Central Excise Tariff. During the surprise visit made on 19.09.2003 by the Officers of DGCEI [Directorate General of Central Excise Intelligence, Jaipur] certain quantity of the goods [1,83,842.80 Mtrs of PMMF] was found to be unaccounted which was said to be kept with the intent of clandestine removal without duty. The Revenue issued Show Cause Notice dated 16.3.2004, which was adjudicated vide Order-in-Original by Joint Commissioner. This order was appealed against before Commissioner, (Appeals)-II, who remanded the matter to the Original adjudicating authority. The Original authority namely Joint Commissioner readjudicated the matter vide Order-in-Original dated 4.12.2006 and against said Order the assessee namely Kanchan Processor Pvt ltd. and Shri Nilesh Bangar, filed appeal before Commissioner (Appeal), Jaipur II, who passed the Order-in-Appeal no. 252-253/ 2008 dated 19.12.2008. Against the said Order-in-Appeal dated 19.12.2008 the assessee, M/s Kanchan Processor Pvt Ltd is presently in appeal before the Tribunal, with the prayer that the said Order-in-Appeal be set aside.

4.2 On the other hand, Revenue in their cross Appeal No. [911/2009] prays that the impugned Order-in-Appeal dated 19.12.2008 be set aside and Order-in-Original dated 04.12.2006 passed by Joint Commissioner be restored.

4.3 The main issue started with the confiscation of quantity of 1,83,842.80 mtrs of Processed Man Made Fabrics (PMMF), where allegation was that the said fabrics did not tally with the appellant's record and the same was lying unaccounted and stored with the intention to remove the same clandestinely without payment of Central Excise duty.

5. After having gone through the case record and the submissions of both the sides, it appears that the Commissioner (Appeals) has assiduously gone through the contents of the documents on record which included the Annexures A to L, L-1 & M to W to the said Order-in-Appeal. The Commissioner (Appeals) in the impugned order analyses the discrepancy and has given the benefit of doubt ordering release of 85,654.74 mtrs of fabrics for the reasons recorded in the Order-in-Appeal dated 19.12.2008. In this regard, the observations of Commissioner (Appeals) in para 8 of the impugned order are as follows:

> "8. Further, in this case, I find that a quantity of 183842.80 mtrs. of fabrics was seized for the reason that specification of these fabrics were not tallying with the specification of fabrics found entered in their computer stock. It was therefore alleged that the said processed fabrics were lying unaccounted for and stored with an intent to remove the same clandestinely without payment of duty. The appellants submitted various detailed Annexures from "A" to "W" in this regard which were examined in detail as above. The appellants produced these Annexure in respect of 159201.90 mtrs. of fabrics (in fact it is 159204.84 mtrs.). Thus, the appellants have not

challenged about the seizure of rest of the quantity of 24637.96 mtrs. i.e. (1,83,842.80-1,59,204.84). As discussed in foregoing paras, there appears some mistakes in respect of 85652.74 mtrs. of fabrics out of 159204.84 mtrs. of fabrics due to the various factors. These factors are mainly due to apparent error in recording of measurement at the time of physical verification of stock. Therefore, I have ordered for release of 85654.74 mtrs. of fabrics from seized quantity of 1,83,842.80 mtrs. of fabrics for the reason recorded above".

6. It is on record in the findings given by the Commissioner (Appeals) in the impugned order that the appellant namely M/s Kanchan Processor Pvt. Ltd and Shri Nilesh Bangar did not challenge the seizure in respect of 24,637.96 mtrs of fabrics. The impugned order has reduced the penalty imposed on M/s Kanchan Processors (P) Ltd, the assessee from Rs Six Lakhs to Rs 2 lakhs and has set aside the penalty of Rs 3 lakhs imposed on Shri Nilesh Bangar by the Original adjudicating authority. The assessee namely M/s Kanchan Processor Pvt Ltd. has prayed that confiscation of goods and imposition of penalty and fine be set aside, whereas Revenue prays that Order-in-Appeal dated 19.12.2008 be set aside and Order-in-Original dated 4.12.2006 passed by Joint Commissioner be restored. However, after due consideration of facts and the submissions of both sides it appears that Commissioner (Appeals) has rightly reduced the penalties on the assessee from Rs 6 lakhs to Rs 2 lakhs and rightly set aside the penalty on Shri Nilesh Bangar, Director in the assessee

company. However, these is no justification in the assessee's prayer to do away with the confiscation of the goods and the redemption fine imposed in case of confiscations, when the assessee M/s Kanchan Processor Pvt Ltd is unable to explain non-accountal of the goods, which have been quantified as 98190.06 mtrs of fabrics valued at Rs 47,13,123/-. There is also no justification in the prayer of the Revenue for setting aside the findings and the decision arrived at by the Commissioner (Appeals) in the impugned order.

7. In the light of above discussions, the impugned order dated 19.12.2008 is sustained and the appeals, filed by the assessee M/s Kanchan Processor Pvt. Ltd. (no. E/810/2009) and the Revenue (no. E/911/2009) are dismissed.

Appeal Nos. 1399 to 1402/2009:

8. Now, we take up four appeals bearing no. 1399 to 1402/2009. These appeals have been filed by M/s Kanchan Processors Pvt ltd., M/s Kanchan Woltex Pvt. Ltd., Shri Nilesh Bangar and Shri Jayesh Bhangar against the Order-in-Original No. 13/2009 dated 26.02.2009 passed by Commissioner Central Excise, Jaipur.

9. i) Brief facts are that Kanchan Group of Companies are engaged in manufacture of processed man made fabrics falling

under Chapters 54 and 55 of the First Schedule to the Central Excise Tariff Act, 1985. Kanchan Group consists of Kanchan Processors (P) Ltd, Kanchan Wooltex (P) Ltd and Kanchan Woollens (P) Ltd. Based on the intelligence, the officers of the DGCEI (Directorate General of Central Excise Intelligence) searched various premises, residence etc related to the Group on 19.9.2003.

ii. Consequent to the searches:

a. 3,40,084.15 mtrs of processed fabric found physically was detained at Kanchan Processors (P) Ltd (KPPL) for further verification.

b. 96,754 mtrs of processed fabrics valued at Rs 62,46,887/- was seized as no duty paying documents were available for the said fabrics.

c. Fabrics of M/s Kanchan Wooltex valued at Rs 1,21,0841/- and fabrics valued at Rs 9,324/- were seized from transporters.

iii. During investigation Revenue (DGCEI) recorded statements of various connected persons. For the goods seized, separate SCNs (Show Cause Notices) were issued, which were adjudicated by Joint Commissioner, Central Excise vide Order-in-Original No. 55/2006. However for the present appeals SCN dated 28.9.2007 was issued inter alia for demand of duty of Central Excise of Rs

90,57,943/- along with interest and imposition of equivalent penalties on the assessee, M/s Kanchan Processors (P) Ltd as mentioned earlier. Penalties of Rs 35,00,000/-, and Rs 20,00,000/- each were imposed on M/s Kanchan Wooltex (P) Ltd and Shri Nilesh Bangar and Sh. Jayesh Bangar respectively. Hence, these four appeals before the Tribunal.

10. After having carefully gone through the records of the case and submissions of both the sides, it appears that whole case is based on the sufficient evidences like private records stock verification, computer records etc which have been corroborated by respective statements of the transporters and purchasers of the goods. The evidences of clandestine removal of the goods without payment of duty is clearly evident from the documentary evidences found out during investigations by the Revenue. The statements which are corroborating the documentary evidences have not been retracted by the concerned persons. The documentary evidences confirming the clandestine removal of the goods without payment of duty include various registers, private notepads, private diaries, private files. There is no substance and force in the submissions given by the ld. Advocate of the appellants in case of these four appeals. The appellants have not been able to counter the documentary evidences and corroborated statements, which support the Revenue’s case and undoubtedly establish

clandestine removal of the goods done without payment of duty of Central Excise.

11. The impugned order dated 26.2.2009 in this regard interalia observes as under:

> ”25…. The case is based on documentary evidences like private records, stock verification report, computer record, LR’s etc. which are corroborated with statements of transporters and purchasers. For example, Sh. Manoj Kumar Agarwal, authorized person of CLSK, Huderbad, when confronted with list prepared on the basis of LR’s resumed from transporters and showing details of processed fabrics dispatched by KWPL, agreed that they had received fabrics as mentioned in the LR’s and he also agreed with the statements of the transporter…..
> 26……
> 27…… I find that Register at S.No. 2 reflect incoming and outgoing processed fabrics from KWPL and this fact is admitted by Sh. Jayesh Bangar, Director KWPL and Sh. Sanjay Kabra, godown incharge KWPL in their statements. The statements have not been retracted till date. The register contains even the registration no. of tempo (conveyance) used for the purpose. The receipts in the Register were also admitted by Sh. Jayesh Bangar and Sh. Sanjay Kabra. Similarly, private Note pad at Sr. No. 31 and 15 contain date wise & quality wise processed fabrics in pieces/thans received from KPPL in godown of KWPL. The contention that private diaries at serial No. 31 and 15 appear to be note books kept by different graders to whom processed fabrics in lumps are given for grading is clearly an after thought because Sh. Sanjay Kabra had admitted that these contain details of processed fabrics received from KPPL in godown of KWPL and he has not retracted his statements till date. Sh. Jayesh Bangar even explained the daily receipt entries in private Note pad at Sr. No 31. Further, I find that as many as three persons confirmed that these records pertain to inward and outward movement of processed fabrics. Private

file at Sr. No. 16 and 7 shows dispatch of processed fabrics in bales by KWPL. Quantity of 1170480 meters of fabrics listed out in Exhibit-III is not the quantity received by KWPL, as stated by KPPL in their reply, but it is the quantity dispatched by KWPL in bale form. The contention that the receipt of bale in the godown after grading has been compared with the lumps cleared by KPRL to K.WPL is therefore factually incorrect. The quantity of 837207 meters of processed fabrics cleared' .by .KPPL to KWPL is taken from the invoices issued by KPPL to KWPL during 22.08.2003 to 18.09.2003.

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29..The private records & documents recovered from the godown of KWPL show date wise & quality wise receipt of processed fabrics by KWPL from KPP and onward sale of processed fabrics by KWPL. As per these records, huge quantity of processed fabrics is established to have been removed without cover of invoice and without payment of duty by KPPL to KWPL. Sh. Jayesh Bangar has admitted that the said resumed records contain day to day receipt and dispatch of processed fabrics by KWPL. The entries in these records are corroborated by statutory invoices and by the statement of Sh. Jayesh Bangar, Director of KWPL and Sh. Sanjay Kabra, godown incharge of KWPL. The fact that entries in the Register (RUD 13) are correct is established in view of the position that as per Register, 210 pieces of fabrics through Vehicle number RSH 0155, 103 pieces through Vehicle No. RJ 0048 and 143 pieces through Vehicle No. RJ 06 1444 were received in the godown on 16.09.03 whereas, KPPL had issued only two invoices on 16.09.03 i.e. 4327 dated 16.09.03 and 4333 dated 16.09.03 in the name of KWPL covering 210 pieces and 103 pieces only respectively. Thus, it goes to show that entries in the register/records resumed from the godown of KWPL are authentic entries of receipt of processed fabrics. The number of bales shown dispatched in the Register (RUD 13) are correlated with the details of dispatches contained in private diary (RUD I5). There is no dispute that private records belong to KWPL as is evident from the statement of Sh. Jayesh Bangar and Sh. Sanjay Kabra. No retraction has been made by the said person till date….

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32…. The case involves **various novel modus operandi for evasion of duty. Intent to evade duty stands established beyond doubt in this case.** The noticees resorted to all possible ways to evade duty and acted in utter defiance of Central Excise Act and rules made there under. Malafide intent also shows from the fact that after certain period, they did not cooperate in investigations. The evidence in the show cause notice is so convincing that **KWPL could not put up anything in their defence reply to counter entries in private records recovered from their godown and from transporters and buyers premises which were corroborated by statements of relevant persons which were never retracted.** The role of KPPL in clandestinely clearances of processed fabrics without payment of duty in close coordination with closely knit KWPL stands proved in view of the foregoing and thus, they are liable to penalty under Section 11AC of the Central Excise Act, 1944. KWPL adopted all possible ways for abetting illicit removal of processed fabrics and manipulated their records for this purpose. KPPL and KWPL are part of a group of companies having Directors of the same family. Thus they acquired possession of, were concerned in transporting, removing, depositing, keeping, concealing, selling and purchasing of excisable goods which they had reason to believe were liable to confiscation. The contention that penalty is not imposable under Rule 26 as this is corresponding to Section 112(b) of the Customs Act which covers only such persons like transporters, warehouse keepers, seller or purchaser who deal with the goods which they know or have reason to believe are liable to confiscation does not hold good simply for the reason that KWPL indulged in acts specified in said Rule 26….

[Emphasis supplied]

12. In the light of the above discussions, there is no scope to interfere with the confirmation of demand along with interest and

imposition of equivalent penalty against the assessee namely Kanchan Processors Pvt Ltd. However, in the face of the fact that assessee has been imposed with the equivalent penalty of Rs 86,01,211/- and after considering the totality of facts and circumstances and taking a lenient view, the penalties imposed on the other appellants namely M/s Kanchan Wooltex Pvt Ltd, Shri Jayesh Bangar and Shri Nilesh Bangar appear to be on higher side. We, therefore, reduce these penalties in case of M/s Kanchan Wooltex Pvt Ltd to 20% of the demand confirmed against the assessee M/s Kanchan Processor Pvt Ltd, which comes to Rs 17,20,242 /-; and in case of Shri Jayesh Bangar and Shri Nilesh Bangar, penalties are reduced to 10% of the demand confirmed against the assessee M/s Kanchan Processor Pvt Ltd, which thus comes to Rs 8,60,121 /-each. In other words, the penalties have been reduced in case of M/s Kanchan Wooltex Pvt Ltd to Rs 17,20,242/- and in case of Shri Nilesh Bangar and Shri jayesh Bangar it comes to Rs 8,60,121/- each. Consequenlty, the impugned order dated 26.2.2009 is modified to above extent and the appeals in case of M/s Kanchan Processors Pvt Ltd is dismissed and appeal filed by M/s Kanchan Wooltex Pvt Ltd, Shri Jayesh Bangar and Shri Nilesh Bangar are partly allowed in above terms.

13. In the result, the impugned Order-in-Appeal no. 252-253 dated 19.12.2008 is sustained and the appeal (No. 810/2009) filed by M/s Kanchan Processors Pvt Ltd and the appeal (No. 911/2009) filed by the Revenue are dismissed; further impugned order dated 26.2.2009 modified to above effect and the appeal (No. 1399/2009) filed by M/s Kanchan Processors is dismissed and the appeals filed by M/s Kanchan Wooltex Pvt Ltd (No. 1401/2009), Shri Jayesh Bangar (no. 1402/2009) and Shri Nilesh Bangar (No. 1400/2009) are partly allowed in above terms.

[Pronounced in the Open Court on 30.03.2017]

(Justice Dr. Satish Chandra)
President

(Ashok K. Arya)
Member (Technical)

Ritu S.