

**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. III

DATE OF HEARING : 03/05/2017.
DATE OF DECISION : 20/07/2017.

Excise Appeals No. 3927-3929 of 2005 and 4042 of 2006

M/s SRF Limited Appellant

Versus

CCE, Chennai – I Respondent
and

Excise Appeal No. 4029 of 2006

CCE & ST, LTU, Delhi Appellant

Versus

M/s SRF Polymers Ltd. Respondent

With

Excise Appeals No. 4030-4041 and 4043-4044 of 2006

CCE, Chennai – I Appellant

Versus

M/s SRF Ltd. Respondents
M/s SRF Polymers Ltd.]

[Arising out of the Order-in-Original No. 59/2005 dated 29/07/2005 and No. 22-23/2005 with 39-43/2005 dated 31/03/2005 and No. 25-38/2005 dated 31/03/2005 and 21/02/2006 passed by The Commissioner of Central Excise, Chennai – I and Commissioner of Central Excise, LTU, Delhi.]

Appearance

Shri Sridharan, Senior Advocate and Ms. Sukriti Das, Advocate – for the appellant/respondent.

Shri M.R. Sharma, Authorized Representative (DR) – for the Respondent/appellant.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 55309-55327/2017 Dated : 20/07/2017

Per. B. Ravichandran :-

These 19 appeals, filed by Assessee as well as the Department, deal with interconnected matters which are to be considered together for a decision. 4 appeals are by Assesseees and 15 appeals are by the Revenue against orders passed by Commissioner of Central Excise, Chennai – I. The appellant/ assessee M/s SRF Ltd. (SRF) have an integrated manufacturing facility for nylon tyre card yarn and nylon tyre fabric used in the manufacture of tyres. Caprolactam is the raw material which is polymerized and extruded into strands. These strands are cut into chips. These chips are known as virgin chips or main poly chips. The chips are drawn into yarn. The yarn is woven into fabrics which is dipped in chemicals and the dipped fabric is sold to tyre manufacturers. SRF cleared the final products namely yarn, fabric and dipped fabric on payment of Central Excise duty. They manufacture yarn of different deniers like 210d, 420d, 840d, 1680d etc. The 210d yarn is predominantly used for making fishnet and is exempted from payment of Central Excise duty under Notification No. 27/1995-CE dated 16/03/1995 and various successor notifications during the period 16/03/1995 to 28/02/2006. The central point of dispute in these cases is

relating to Central Excise duty liability on poly chips – both virgin and non-virgin, manufactured and consumed further by the appellant/assessee in the manufacture of 210d yarn which is exempted. Connected dispute is demand of Modvat credit taken on inputs used in the manufacture of 210d yarn which is exempted.

2. The Department issued various show cause notices to the appellant/assessee to demand excise duty on main poly chips (virgin chips) and batch poly chips (non-virgin chips) manufactured and consumed by the appellant/assessee. 4 such demand notices covering the period June 1995 to March 1997 were decided by the Commissioner vide order dated 18/12/1997. Against this order, both SRF and Department preferred appeals before the Tribunal. The Tribunal vide final order No. 1136/1998 dated 05/06/1998 set aside the impugned order and remanded the matter to the Commissioner for a fresh decision, to consider the claim of SRF for exemption. The appeal by Department also was remanded back vide final order No. 624/2003 dated 04/08/2003 for a consideration of the valuation issue.

3. Apart from the above demands, periodical show cause notices to demand Central Excise duty as well as to deny Modvat credit on inputs with reference to manufacture of 210d yarn were issued. These notices covered periods from April 1997 to March 2002 and September 1994 to May 1995. Three more show cause notices were issued to demand duty on batch poly chips (non-

virgin chips) cleared to job workers. All these demand cum show cause notices were taken up together and decided by the Commissioner in terms of denovo direction of the Tribunal. The impugned order dated 31/03/2005 was issued by the Commissioner. The Commissioner held that : (a) batch poly chips are marketable ; (b) exemption under Notification 111/1995-CE and successor notifications is not available for non-virgin batch poly chips ; (c) exemption under Notification 47/2004-CE (NT) dated 22/09/1994 for nylon chips used in the manufacture of yarn/twine exported is not available as there are no supporting records ; (d) valuation for batch poly non-virgin chips is to be made under best judgment principle ; and (e) Modvat credit of duty paid on inputs used in the manufacture of 210d yarn is not available to SRF.

4. Another set of proceedings were initiated for demanding Central Excise duty on wash water cleared by SRF to SRF Polymers Ltd. during the period when M/s SRF Polymers Ltd. were in existence from 01/04/2002 to December 2008. SRF Polymers Ltd. merged with M/s SRF Ltd. w.e.f. 01/01/2009. Accordingly, the entire factory belongs to SRF Ltd. again, after 01/01/2009. The demand notices issued with reference to wash water was decided by the Commissioner vide orders dated 31/03/2005 and 29/07/2005 the Commissioner held that wash water is a manufactured product having significant commercial value and accordingly liable to Central Excise duty. The product was classified under CETH 3824.

5. Another set of demands were for Central Excise duty on batch non-virgin chips cleared by SRF Polymers Ltd. to SRF Ltd. These demands were decided by the Commissioner vide order dated 31/03/2005. He held that these batch non-virgin poly chips are marketable. They are not eligible for exemption under Notification 6/2002-CE dated 01/03/2002. The exemption for batch non-virgin poly chips claimed to have been used in the manufacture of nylon yarn exported was denied.

6. As narrated above, the dispute mainly centered around Central Excise duty liability of non-virgin batch poly chips manufactured by SRF/SRF Polymers and connected issue of valuation and Modvat on inputs. To summarize, the appeals – both by assessee as well as Revenue, are against 4 sets of orders passed by the Commissioner of Central Excise, Chennai – I : these are 59/2005 dated 29/07/2005, 22-23/2005 dated 31/03/2005, 25-38/2005 dated 31/03/2005 and 21/02/2006 and 39-43/2005 dated 31/03/2005.

7. Shri Sridharan, Senior Advocate appeared for the appellant/assessee. He elaborately submitted on the process of manufacture of main virgin poly chips, batch non-virgin poly chips in the appellant's integrated facility. During the course of arguments, the learned Counsel submitted that they are not contesting the tax liability of main virgin poly chips, however, the method of valuation of such virgin chips for excise duty purpose

is being contested. The submission of the learned Counsel may be summarized as below :-

(a) the non-virgin batch poly chips are not marketable. They are obtained by polymerization in the factory of the appellant/assessee and are directly sent to respective silos. From there they are sent to respective machines for conversion into yarn. The chips are not packed in nitrogen blanketed containers. Without such special packing these chips cannot be marketed. Relying on the decisions of the Hon'ble Supreme Court in **Union of India vs. Delhi Cloth and General Mills Co. Ltd.** reported in **1997 (92) E.L.T. 315 (S.C.)** and **Bata India Limited vs. CCE, New Delhi** reported in **2010 (252) E.L.T. 492 (S.C.)**, the learned Counsel contested the duty liability of non-virgin batch poly chips ;

(b) non-virgin poly chips originate from wash water which is classifiable under Chapter 39. Accordingly, exemption for such chips is available. Waste and scrap itself need not fall under Chapter 39 to claim such exemption. It is enough if the waste and scrap is arising out of goods of Chapter 39 ;

(c) non-virgin poly chips originating from oligomer are exempt in view of classification of such oligomer under CETH 3916 as held in appellant/assessee's own case vide final order dated 05/06/1998 ;

(d) the Original Authority has incorrectly recorded that virgin lactum was used in batch polymerization ;

(e) the show cause notice issued to SRF Polymers Ltd. clearly admits that SRF Polymers were eligible for exemption under Notification 6/2002-CE (Sl. No. 73) in respect of nylon chips produced out of caprolactam,

recovered from the waste material in the depolymerisation plant ;

(f) valuation of virgin poly chips for the period prior to 01/07/2000 should have been made based on comparable goods. Valuation of non-virgin batch poly chips can be based on value of similar goods marketed by M/s Suncity during the period March 1997 to June 2000 ;

(g) the valuation method adopted is contrary to law. For the whole period 01/07/2000 to 31/03/2002 a single value is taken, arbitrarily ;

(h) 210d yarn exported was made using main virgin poly chips only. The entire export quantity was wound on cheese. This is clear from packing list and invoice. The impugned order mixed up the manufacturing process of SRF and SRF Polymers. SRF Polymers do not manufacture any virgin poly chips. The entire export benefit claimed by SRF Polymers is correct due to the fact that the yarn/twine manufactured by SRF Polymers are only from non-virgin poly chips. There is no conflict of claims by these two units;

(i) the Original Authority did not follow the principles of natural justice. The basis for valuation followed in the impugned order is different from what is alleged in the show cause notice. The second order is different from the first order. Due verification of documents available and submitted by the appellant/assessee has not been made by the Commissioner. The export of 210d yarn and twine is supported by documents and the duty demand on poly chips attributable to such export is not sustainable. Similarly, there is no need for reversing Modvat credit on inputs used in the manufacture of goods which are exported.

8. The learned Counsel for the appellant/assessee further submitted that the dispute relating to duty liability of wash water has been dealt with in appeal No. E/3929/2005. He submitted that wash water is not a manufactured commodity but a waste emerging during the course of manufacture of poly chips/yarn. The Department did not discharge the burden of proof of "manufacture" and "marketability" of wash water. The residue/waste arising in the course of manufacture cannot be considered as a marketable commodity. Further, it is submitted that test reports do not support the case of the Department. Wash water is held to be not an excisable commodity by the Tribunal in the case of **CCE, Bombay vs. Nirlon Synthetic Fibres & Chemicals Ltd.** reported in **1983 (14) E.L.T. 2418 (CEGAT)**. The Hon'ble Supreme Court in **Nirlon Synthetic Fibres & Chemicals Ltd. vs. CCE** reported in **1996 (86) E.L.T. 457 (S.C.)** held that even the recovery of caprolactam from wash water is not 'manufacture'. The appellant/assessee also contested the classification of wash water under CETH 3824.

9. Shri M.R. Sharma, the learned AR for Revenue while reiterating the main points in the impugned order submitted that the appeals by Revenue are on the point that the Original Authority should not have extended exemption benefit to batch non-virgin poly chips, on prorata basis, manufactured out of certain waste and scrap falling under Chapter 39 and 55. These batch non-virgin poly chips have not been manufactured separately from these raw materials. The entire raw materials are

used in a composite manner in the manufacture of batch non-virgin poly chips. As such, the Original Authority should not have allowed the exemption to a part of non-virgin poly chips. He also submitted that there is a error in quantification of penalty under Section 11AC as duty for month of October 1996 has not been considered while computing the penalty.

10. We have heard both the sides at length and perused the appeal records and various written submissions filed by the appellant/assessee. For better appreciation the issue involved, the process of manufacture undertaken by the appellant/assessee is to be examined. As already noted SRF are engaged in the manufacture of nylon tyre cord fabric, nylon yarn and nylon chips using caprolactam as the raw material. The caprolactam is polymerized in an uninterrupted and continuous process plant known as main poly-plant. The polymerized material is extruded into nylon strands and then cut into chips known as main poly chips. During the course of polymerization only 90% of the caprolactam is polymerized fully. The rest of about 10% is sticking to the nylon strand as a coating in the form of unreacted and partially reacted material referred to as monomer (8.5%) and oligomer (1.5%), respectively. The nylon strand cut to nylon chips are washed with hot water jets. During such washing monomer and oligomer get dissolved and collected as wash water. The said wash water is pumped to monomer recovery plant where the monomer (caprolactam) is recovered by a process of evolution and distillation. The resultant recovered

product is known as MRP lactum. During this process, oligomers are also separated and taken to depolymerisation plant for recovery of caprolactam. The caprolactam recovered on such depolymerization is called de-poly lactum. Apart from oligomer, nylon yarn waste, tyre cord fabric waste, drawn waste, waste chips etc. which are generated in various manufacturing sections are also de-polymerized in the commodity polymerization plant resulting in recovery of de-poly lactum. The MRP lactum and de-poly lactum are polymerized in a batch poly plant. The resultant product is referred to as batch poly chips or non-virgin poly chips.

11. As already noted earlier in this order, SRF in the course of manufacture of tyre cord fabric produced nylon yarn of various deniers. Yarn of 210d is exempted from Central Excise duty. Hence, the issue arose regarding duty liability of poly-chips both virgin as well as non-virgin – used in the manufacture of such exempted 210d yarn. The duty liability of such virgin poly chips captively used in the manufacture of 210d exempted yarn is not contested by SRF. However, they are contesting the duty liability on batch non-virgin poly chips used in the manufacture of 210d yarn. When SRF Polymers Ltd. were in existence due to demerger of the manufacturing facility, the wash water arising during the course of manufacture of poly chips are cleared to SRF Polymers Ltd. who thereafter undertook further process of manufacture of batch poly chips. The process which was integrated as one unit was split up into two units during the

existence of M/s SRF Polymers Ltd. who dealt with the process after emergence of wash water.

12. With these factual background, we may examine the various disputes that are subject matter of these appeals. The substantial demand as well as issues were dealt with in the original order No. 25-38 dated 31/03/2005 of the Commissioner of Central Excise, Chennai – I. The first issue to be considered is whether batch non-virgin poly chips are marketable and chargeable to duty as excisable goods. The appellants/assessee contended that poly chips are not marketable. The appellants/assessee contended that the non-virgin poly chips are emerging in the continuous process of manufacture through a parallel recovery process. For marketing poly chips, these are to be packed in nitrogen blanketed containers. Since, no such packing is done by the appellant/assessee the product is not marketable and consequently not liable to Central Excise duty. We are not convinced by the said argument. Admittedly, the batch non-virgin poly chips are emerging due to deliberate manufacturing process by the appellant/assessee. During the course of polymerization of caprolactam the main virgin poly chips are produced which are washed in the hot water resulting in emergence of pure virgin poly chips and wash water. The wash water is put to further process, as already discussed earlier in this order, resulting in the production of batch non-virgin poly chips. Regarding requirement of nitrogen packing we note that such packing will be required when the product is cleared to some distance. In the present

case, in an integrated chemical plant, for captive consumption there is apparently no need for such nitrogen packing as the product is stored and dealt with in controlled environment for the required use. We note that this issue has been dealt with by the Tribunal in **J.C.T. Ltd. vs. CCE, Jalandhar** reported in **2004 (169) E.L.T. 154 (Tri. – Del.)**. It was held that if the product is captively consumed which does not require any packing nor any precaution is to be taken in respect of those products; this does not mean that the product loses the capacity of being marketed. As held by the Hon'ble Apex court in **Camlin Ltd. vs. CCE, Mumbai** reported in **2005 (180) E.L.T. 307 (S.C.)**, marketability is essentially a question of fact to be decided on facts of each case and once it is shown that the product as actually being bought marketability gets established. Admittedly, non-virgin poly chips are in fact marketed and the appellants/assessee themselves indicated that M/s Suncity did market this product and wanted to compare the value of such sale for adopting to their excise valuation. Hence, we note that special packing required for removal of goods safely to the buyer, which is not required for captive consumption itself, cannot determine the marketability of any product. Accordingly, we hold that the batch non-virgin poly chips are excisable products.

13. The next important point for decision is whether the benefit of exemption Notification No. 111/1995-CE dated 06/09/1995 as well as the successor notifications are available to such batch non-virgin poly chips. We note that Sl. No. 3A of Notification

15/1994-CE as amended by 111/1995-CE states that goods falling under Heading 3901-3914 – plastic materials, are fully exempt if re-processed from, or produced out of, the scrap or the waste of goods falling under Chapter 39, 54, 55 or 59. The Original Authority held that the batch non-virgin poly chips cannot be said to have been produced out of scrap or waste. The source of such poly chips is unreacted monomer recovered in the MRP resulting in MRP lactum. As such, he held that the same is nothing but unreacted caprolactam and cannot be considered as a waste or a scrap product. We note that the wordings in the notification are very clear to the effect that the product should have been re-processed from or produced out of scrap or waste of goods falling under specific chapters. It is not necessary for the waste and scrap itself to fall under Chapter 39. The product should originate out of scrap or waste of goods falling under Chapter 39. Admittedly, the whole recovery process which results in batch non-virgin poly chips starts with the collection of wash water. In other words, the wash water which contains unreacted monomer and partial reacted oligomer is the raw material for a recovery of batch non-virgin poly chips. This fact cannot be disputed. The wash water is not a manufactured final product. In fact, the caprolactam put to polymerization results in main poly chips which are subjected to hot water wash in order to remove the unreacted monomer as well as oligomer to get pure virgin poly chips. It is apparent that the entire manufacturing process is aimed at producing main virgin poly chips. The technological

necessity in the process results in a waste by-product in the form of wash water. In order to extract the available monomer/oligomer for further use from such wash water separate recovery processes are undertaken by the appellant/assessee. Incidentally, we note that in appellant/assessee's own case the oligomer were held to be classifiable under Heading 3916 vide final order dated 05/06/1998. We also note that the Original Authority in his order No. 22-23/2005 (para 5) recorded that wash water is a 'process waste' obtained during the course of manufacture of nylon chips. We also note that in the demand notice issued to SRF Polymers Ltd. it is stated that in respect of poly chips produced out of caprolactam recovered from the waste material in the depolymerisation plant the assessee is eligible for exemption under Notification 6/2002-CE (Sl. No. 73). This is contrary to the claim now being made in appeal by the Department regarding Original Authority extending benefit of Notification 111/1995-CE to batch non-virgin poly chips manufacturing out of waste chips, strand waste, pan cake, undrawn waste, drawn yarn waste and tyre cord waste etc. We hold that while the Original Authority allowed the said exemption to batch non-virgin poly chips manufactured out of waste chips etc., he did not allow the said exemption to the non-virgin poly chips attributable to recovery process from unreacted monomer and oligomer contained in wash water. On careful consideration of the findings of the Original Authority and the submissions of the appellant/assessee

we note that no distinction can be made in extending the said exemption and batch non-virgin poly chips are eligible for the exemption for the period 06/09/1995 onwards.

14. The Original Authority denied the exemption to poly chips used in the manufacture of fishnet yarn/twine exported out of India, under Notification 47/1994-CE (NT). In this connection, we note that the appellant/assessee strongly contended that the entire quantity of 210d yarn exported was wound on cheese. This is supported by the packing list and invoice. Export yarn was never wound on prin. We also note that the appellant/assessee have submitted detailed records to substantiate their claim regarding export of fishnet yarn/twine. These facts can be cross verified by the Jurisdictional Authorities. It is noted that the appellant/assessee supported his argument by referring to proof of export, invoicewise break-up of export and other documents. It is also noted that SRF Polymers (during the period of their existence) did not manufacture any virgin chips. Accordingly, it is apparent that the entire production of chips by SRF Polymers is of batch non-virgin poly chips only. As such, the assertion of the appellant/assessee that SRF Polymers used only non-virgin poly chips in the export of yarn or twine is correct. We hold that subject to verification of supporting documents the consequential benefit available to the dutiable poly chips used in the manufacture of yarn/twine exported out of India should be considered and allowed by the Jurisdictional Authority.

15. The next issue for consideration is the correctness of assessable value for virgin poly chips for the period prior to 01/07/2000. The Original Authority held that the assessable value for the period 1994-1995 to 1996-1997 shall be on the basis of data furnished by SRF in their letter dated 03/12/1997. For the period April 1997 to June 2000, citing non-provision of data, the Original Authority held that he is constrained to follow the earlier data for the assessable value, for this period by best judgment method. We note that the appellant/assessee categorically asserted that they have been maintaining proper Cost Auditor's report under Section 233B of Companies Act. They have never been asked to provide these cost auditor's reports. The matter was pending before the Commissioner for 9 years and no request to submit data of cost of production was made to SRF. For the first time, the data was asked on 15/03/2005 and the same was submitted on 30/03/2005. The impugned order was passed on 31/03/2005. In such situation, we note that when the appellant/ assessee is having certified CAS-4 Standard Cast Data for the periods now in dispute the same should have been adopted by the Original Authority for arriving at the duty liability on virgin poly chips. Incidentally, we also note that in the first round of adjudication the duty demand was based on cost of production.

16. Similarly, the appellant /assessee also contested the valuation adopted for non-virgin chips. In any case, we note that since non-virgin chips were found to be eligible for exemption

under Notification 111/1995 when used in the manufacture of exempted final product, the valuation for this period is of no relevance.

17. Two appeals by SRF Ltd. (E/4042/2005 and E/3927/ 2005) deal with excisability/duty liability of wash water cleared by SRF Ltd. to their de-merged to sister unit located adjacent, namely SRF Polymers Ltd. The Original Authority in his orders dated 31/03/2005 and 29/07/2005 held that wash water contains 10% of unreacted as well as partially reacted caprolactam and, as such, the same should be considered as a manufactured product. Since, wash water has got significant commercial value and SRF Polymers Ltd. exist only for use of such wash water, the marketability was held to be established. We have noted the manufacturing process of nylon earlier in this order. Wash water emerges as residual by-product when main poly chips emerge after polymerization and washed with hot water. The impugned order itself admitted that wash water is nothing but a 'process waste'. It is apparent that wash water emerges as a technical necessity in the manufacture of nylon polyamide chips. In order to make virgin polyamide chips, it is necessary to wash the main polymerized chips. Admittedly, for manufacture of nylon polymerized chips the required quantity of caprolactam has to be used. It is not the case that for avoiding generation of wash water, lesser quantity of such caprolactam can be used. In other words, the entire quantity of caprolactam used as input in the manufacture of nylon polyamide chips are put to intended use.

The unreacted or partially reacted caprolactam of 10% of total quantity is removed by hot wash. This results in emergence of wash water. Since, it contains recoverable monomer as well as oligomer the same is put to further process. We note that considering the process and the technical requirement, wash water cannot be considered as a manufactured product. The same is emerging as a compulsory waste by-product during the course of manufacture of nylon polyamide chips. The fact that it is put to further commercial use, by elaborate recovery process by itself, will not make it a product emerging out of manufacturing process. We also note that during the material period, the commercial value as recorded for clearance of wash water was Rs. 1/- to Rs. 2/- per liter. This is indication of the nature of wash water as a waste by-product.

18. It is also necessary to note that the impugned order did not examine the legal implication and the process involved in chemical industry like the present appellant/assessee to sustain the allegation of "manufacture" and "marketability" of wash water. The onus to show that goods have gone through a process of manufacture lies on the Revenue [**Union of India vs. Ahmedabad Electricity Co. Ltd.** reported in **2003 (158) E.L.T. 3 (S.C.)**]. It is necessary to note that the Revenue has conducted chemical test of wash water. Then reports state that wash water is an aqueous solution of un-identifiable organic compounds. These test reports do not support the case of the Revenue with reference to "manufacture" of excisable goods or

“marketability” of such goods. In **CCE, Bombay vs. Nirlon Synthetic Fibres & Chemicals Ltd.** reported in **1983 (14) E.L.T. 2418 (CEGAT)**, while deciding whether recovery of caprolactam out of wash water is a manufacturing activity, the Tribunal held that wash water is not of excisable commodity. The Hon’ble Supreme Court in **Nirlon Synthetic Fibres & Chemicals Ltd. vs. CCE** reported in **1996 (86) E.L.T. 457 (S.C.)** held that recovery of caprolactam from wash water is not manufactured. On careful analysis of the facts of the case, we are of the considered view that wash water is nothing but a residual waste emerging in the process of manufacture of polyamide chips and is not an excisable commodity.

19. Another issue which is agitated in one of the appeal is that the show cause notice dated 04/10/1999 issued covering the period of September 1994 to May 1995 was not sustainable due to limitation. We have examined the findings of the Original Authority in this regard. The Original Authority recorded that the Department was aware of the fact that SRF is manufacturing nylon yarn of waste denierage out of nylon polyamide chips and these chips are manufactured out of caprolactam. The Commissioner, however, held that the Department was not aware of use of virgin poly chips, bought out chips and virgin lactum in the manufacture of exempted 210d yarn. We note that the Department is aware of the usage of various inputs in the manufacture of exempted yarn. The appellant/assessee relied upon letter dated 30/10/1991 issued by the Jurisdictional

Superintendent of Central Excise as well as show cause notices dated 29/09/1993, 02/03/1994, 09/02/1995 and 26/05/1995 regarding disputed Modvat credit for exempted final product. In this situation, we note that the Department was aware of the manufacture of 210d yarn and various inputs used in such manufacture. The findings of the Original Authority that a particular nature of input used in the manufacture of 210d yarn is not known to the Department is not tenable.

20. In view of the above discussion and the analysis, we arrive at the following findings :-

(i) non-virgin batch poly chips are marketable, excisable, liable to duty. These poly chips are eligible for exemption Notification No. 15/1994, as amended by Notification No. 111/1995 and various succeeding notifications on similar lines. These non-virgin poly chips are manufactured out of waste and scrap and are eligible for the exemption under these notifications.

(ii) the duty liability of virgin poly chips, used in the manufacture of exempted fish net yarn is not being contested by the appellant/assessee. However, the valuation for such duty liability should be made based on cost construction method for which all the costing data in terms of CAS-4 are available with the appellant/assessee for the material period ;

(iii) dutiable poly chips when used in the manufacture of exempted fish net yarn or twine exported out of country need not pay excise duty. Similarly, the Cenvat credit attributable on input items which are used in the manufacture of fish net yarn exported out of country need

not be reversed. Quantification of these concessions relating to exported goods are to be re-verified based on the documents submitted by the appellant/assessee ;

(iv) wash water is not to be considered as a manufactured excisable final product.

21. With the above observations, the appeals filed by the appellant/assessee as well as by Revenue are disposed of.

(Order pronounced in open court on 20/07/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

PK