IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

COURT No.

APPEAL Nos. E/59455/2013 & 55141/2014-EX[SM]

Sr. No.	Appeal No.	Appellant	Respondent	Impugned Order
1.	E/59455/2013	V.K. Sodani	Commissioner of Central Excise, Jaipur-II	O-I-A No. 45(VC)CE/JPR-II/2013 dated 15.05.2013 passed by Commissioner (Appeals-II) Customs and Central Excise, Jaipur
2.	E/55141/2014	SPBL Ltd. (Now Sangam India Ltd.)	Commissioner of Central Excise, Jaipur-II	O-I-A No. 161(OPD)CE/JPR-II/2013 dated 22.10.2013 passed by Commissioner (Appeals-II) Customs and Central Excise, Jaipur

Appearance:

Ms. Rinki Arora (Advocate) for Appellant(s)
Shri K. Poddar & Shri S. Nathan (AR) for Respondent(s)

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 26/04/2018
Date of Pronouncement : 22/06/2018

FINAL ORDER NOs 52411-52412/2018

Per: Archana Wadhwa

As per facts on record the appellant is engaged in the processing of Man Made Fabrics for and on behalf of Merchant Exporters. The value of the said fabrics was being declared by the appellant on the basis of cost of the raw material provided by the merchant exporters.

2. As per the investigations conducted by the Revenue, it was found that one of the merchant exporter M/s Radiant Silk Mill Pvt. Ltd. Bhilwara, over valued the cost of the Man Made Fabrics inasmuch as the quality of the yarn used by them was on the lower side whereas they had shown the value of the same on the higher side. The appellant was entitled to the credit of duty paid on the raw materials which were being processed by them and the merchant exporter were availing the deemed credit.

3. Upon above basis, proceedings were initiated against the appellant by way of issuance of a show cause notice dated 25.11.2004 alleging that they had availed excess deemed credit of Rs.3,36,047/- on the export of the processed man made fabrics by M/s Radiant Silk Mill Pvt. Ltd. Inasmuch as the cost of the fabrics shows by the said merchant exporter was on the higher side. The proceedings resulted in passing of the present impugned orders confirming demands and imposing penalties. Hence the present appeal.

4. Learned advocate Ms. Rinki Arora appearing for the appellant assails the impugned orders on the ground of limitation by submitting that whatever cost was declared by the merchant exporter, the same was adopted by the present

appellant who was processing the fabrics on job work basis and the credit was availed accordingly. It is only as a result of the investigations by the Revenue that the cost of fabric was found to be overvalued in which case no mala fide can be attributed to them to invoke the longer period of limitation. For the above proposition reliance stands place on the Tribunal's decision in the case of M/s Madhu Tex Industries Ltd., Shri Manohar R Punjabi vs. Commissioner of Central Excise, Thane-I reported at 2009-TIOL-985-CESTAT-MUM and in the case of Vishnu Dyeing & Printing Works vs. The Commissioner of Central Excise, Mumbai reported at 2007-TIOL-1945-CESTAT-MUM

5. After hearing the learned AR I find that the demand is raised by show cause notice dated 25.11.2004 for the period 2002 i.e., by invoking the longer period of limitation. The Tribunal in the above referred cases has dealt with an identical issue and has observed that job workers doing processing of fabrics received from merchant manufacturers cannot be held responsible for mis-declaration of the value of the fabric by merchant manufacturer and there is no legal requirement showered on the processor to verify the correctness of the declarations furnished by owners. In such a scenario the extended period cannot be invoked.

6. By following the ratio of the above decisions I hold the demand to be barred by limitation and set aside the impugned orders and allowed both the appeals.

(Pronounced in Court on 22/06/2018.)

(Archana Wadhwa)
Member (Judicial)

Ankit