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. IV

DATE OF HEARING/DECISION : 22/02/2019.

Excise Appeals No. 53701-53709 of 2015

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-038-15-16, BHO-EXCUS-001-APP-039-15-16, BHO-EXCUS-001-APP-028-15-16, BHO-EXCUS-001-APP-031-15-16, BHO-EXCUS-001-APP-030-15-16, BHO-EXCUS-001-APP-040-15-16, BHO-EXCUS-001-APP-033-15-16, BHO-EXCUS-001-APP-029-15-16, BHO-EXCUS-001-APP-032-15-16 dated 29/07/2015 passed by The Commissioner of Central Excise, Indore.]

M/s Spentex Industries Ltd. Appellant

Versus

CCE & ST, Indore Respondent

Appearance

Shri Manish Saharan, Advocate – for the appellant.

Shri H. Saini, Authorized Representative (DR) – for the Respondent.

CORAM :**Hon'ble Shri V. Padmanabhan, Member (Technical)**
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Final Order No. 50383-50391/2019 Dated : 22/02/2019

Per. Rachna Gupta :-

The present order disposes of the said number of appeals. The relevant facts for the impugned adjudication are as follows : that the appellants are engaged in manufacture and export of synthetic yarn. Initially, the appellants submitted claims for rebate of central excise duty for the duty paid on the inputs/raw materials used in the manufacture of exported goods under Rule 18 of Central Excise Rules, 2002 readwith Notification No. 21/2004-CE (NT) dated 06/09/2004. The said claim was sanctioned, however, the amounts so sanctioned was appropriated against the claim of duty paid on export of finished goods. Aggrieved of the said appropriation that the appeals in hand have been filed.

2. We have heard both the parties. It is submitted on behalf of the appellant that vide final order of this Tribunal bearing No. 55766-55774 of 2017 dated 19/07/2017 since the matter was brought to the notice of this Tribunal to have been sub-judiced before the Hon'ble High Court that the appeals were disposed of giving liberty to the assessee/appellant to come again after having the final verdict from the Hon'ble High Court within the prescribed time, if advised so. The order of the Hon'ble High Court of Madhya Pradesh Bench at Indore IA No. 2080 of 2018 vide which the writ-petition No. 4474 of 2007 was disposed of in favour of the assessee/appellants on the basis of the decision of Hon'ble Supreme Court in the case of **Spentex Industries Ltd. vs. CCE** (appellant's own case) reported in **2015 (324) E.L.T. 686 (S.C.)**, wherein the identical issue was adjudicated in favour of the appellant was obtained. It is thereafter that all the appeals which were disposed of vide the order dated 19 July 2017 were allowed to be restored vide miscellaneous order No. 50724-50732 of 2018 dated 05/10/2018.

3. It is submitted that since the demand against which the rebate claim has been ordered to be appropriated stands set aside, in view of the decision of Hon'ble Apex Court, the disposal of the appeals in accordance thereof is prayed.

4. Per contra, it is submitted on behalf of the department that the decision of Hon'ble Apex court in **Spentex Industries Ltd.** (supra) was not available before the Adjudicating Authorities below. Hence, there is no reason holding the order under challenge as to be infirm.

5. After hearing both the parties and considering the facts as brought to our notice by the learned Counsel of the parties, we are of the opinion that :

> The decision of Hon'ble Apex court clarifies the issue with regard to grant of rebate of duty paid on export of finished goods as well as imports (raw materials) used in manufacturing of such exported finished goods under the provisions of Central Excise Act, 1944 and the rules made thereunder has been decided in favour of the assessee. In view of the said decision, the impugned appropriation at this stage cannot at all be upheld for want of the said demand stands no more sustainable.

6. Simultaneously we are of the opinion that this decision was not available to the Commissioner (Appeals) at the time of passing the impugned order. We, therefore, deem the present appeal to be fit case to heard by Original Adjudicating Authority to re-decide the issue of the appropriation herein taking into

consideration the aforesaid decision of Hon'ble Supreme Court in appellant's own case. Appeals are accordingly stand allowed by way of remand.

(Order dictated and pronounced in open court)

(Rachna Gupta)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

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