CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

APPEAL Nos. E/904-906/2009
(Arising out of Orders-in-Appeal (De novo) Nos . 34 to 36/2003 (G) CE, dated 22.09.2003, passed by CCE,C (Appeals) Guntur)

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| SAI JUTE PRODUCTGS PVT. LTD | .. | APPELLANT |
| | Vs. | |
| CCCE&ST, Guntur | .. | RESPONDENTs |

Appearance
Shri D. Viswanathan, Consultant for the Appellant.

Shri Arun Kumar, Dy. Commissioner/AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 23.05.2018
Date of Decision: 23.05.2018

FINAL ORDER No: A/30624-30626/2018

[Order per: P. VENKATA SUBBA RAO]

1. These appeals have been filed by the appellant against Orders-in-Appeal (*De novo)* Nos. 34-36/2003, dt. 22.09.2003 passed by the Commissioner (Appeals), Guntur, rejecting their appeals against the orders of the Asst. Commissioner. The issue in dispute is the dutiability of single

ply jute produced by the appellant and captively consumed in the manufacture of multiple fold hank jute yarn and cleared without payment of duty during three different periods from April 1996 to February 1997. The facts are not undisputed. The appellants manufactured single ply jute yarns and used it to manufacture multiple fold yarn jute which is cleared without payment of duty. The appellant also filed classification list with the department indicating single jute yarn as the goods intended to be cleared by the appellants.

2. Final products of the appellants are exempted vide notifications No. 26/95-CE, dt. 16.03.1995 and 8/96-CE, dated 23.7.1996. Since the final products are exempted, department has demanded duty on the dutiable intermediate products viz; single ply jute yarn. And the demands were confirmed by the adjudicating authority and upheld by the Commissioner (Appeals).

3. The appellant filed this appeal on the following grounds.

(a) Jute yarn is not marketable at the bobbin stage and the jute yarn captively consumed in the conversion into straight reel hanks is therefore not excisable. As has been held by Hon'ble Supreme Court in a number of judgments for excisability, the marketability of the goods as an essential ingredient and since the single ply yarn is not marketable, no duty is payable thereon; therefore the orders of the Commissioner (Appeals) need to be set aside.

(b) In a similar case, in the case of Sri Venkata Balaji Jute Mills Pvt. Ltd., Srikakulam District, the adjudicating authority held that jute yarn at bobbins stage is not marketable and dropped the demands.

(c) Entire demand arises on account of an audit objection by CAG which has finally been settled.

(d) In view of the above, Order-in-Appeal may be set aside with consequential relief.

4. Ld. DR on the other hand reiterated the arguments in the Order-in-Appeal and said that the marketability of goods has to be examined in each case individually as has been held by Hon'ble Apex Court in a number of judgments. In this case, the appellant himself had filed classification lists for single jute yarn as the goods intended to be cleared by them. Thus, these goods in classification are capable of being marketed and hence are liable to excise duty.

5. We have perused the records and considered both the arguments.

6. The only question to be decided here is whether the single ply yarn produced by the appellant is marketable and thereby liable to excise duty or not. Ld. Commissioner (Appeals) has recorded that the appellant themselves have filed a classification list over the single ply jute yarn which

the manufacturer has capable of being marketed. This fact has not been disputed by the appellant. Thus they had an intention of marketing this yarn even if they have not actually sold any. Thus, the excisability of the product in question is established by the declaration by the assessee themselves in the classification list. We, therefore, agree with the findings of the Commissioner (Appeals) that singly ply jute yarn manufactured by the appellant is marketable and therefore excisable and find no reason to interfere in this order.

7. Appeals are, therefore, rejected and the Order-in-Appeal passed by the Commissioner (Appeals) is upheld.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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