IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, EASTERN ZONAL BENCH: KOLKATA

Ex.Appeal Nos.76235/14, 75071/16,75134/16,75142/16, 75251/16, 75252/16,76082/16,75131/16, 75229/16 & 75097/16

(Arising out of the following Orders-in-Original Nos.

01/Commr./CE/Kol.II/Adjn./2014-15	dated	17.07.2014,
11/Commr./CE/Kol.III/Adjn./2015-16	dated	06.11.2015,
10/Commr./CE/Kol.III/Adjn./2015-16	dated	04.11.2015
09/Commr./CE/Kol.III/Adjn./2015-16	dated	04.11.2015
13/Commr./CE/Kol.III/Adjn./2015-16	dated	01.12.2015
14/Commr./CE/Kol.III/Adjn./2015-16	dated	01.12.2015
40/Commr./CE/Kol.III/Adjn./2015-16	dated	28.03.2016
28/Commr./CE/Kol.V/Adjn./2015-16	dated	30.11.2015
07/Commr./CE/Kol.III/Adjn./2015-16	dated	30.10.2015
12/Commr./CE/Kol.III/Adjn./2015-16	dated	06.11.2015

all passed by Commr. of Central Excise, Kol.II, III & V.

(1) M/s Bally Jute Com. Ltd.
(2) M/s The Empire Jute Co. Ltd.
(3) M/s Jagatdal Jute & Indus. Ltd.
(4) M/s Kankinarrah Co. Ltd.
(5) M/s Naffar Chandra Jute Mills Ltd.
(6) M/s AI Champdany Indus. Ltd.
(7) M/s Hooghly Infrastructure Pvt. Ltd.
(8) M/s Cheviot Com. Ltd.
(9) M/s Alliance Mills Ltd.
(10) M/s Trend Vyapaar Ltd.

Applicant (s)/Appellant (s)

Vs.

CCEx. Kol.II, III & V

Respondent (s)

Appearance:

Shri N. K. Chowdhury, Adv. for Sl.No.(1),
Shri K.P.Dey and Shri H.K.Pandey, both Advs. for Sl.Nos. (2), (8) & (9)
Shri I.Banerjee & Shri Sourabh Bagaria, both Advs. for S.Nos. (3), (4), (5) & (6)
Shri Anjan Dasgupta, Adv. for Sl.No.7 &
Shri Arvind Baheti, ld.C.A. for Sl.No.10 for the Appellant (s)

Shri S.Mukhopadhyay, Supdt. (AR) for the Revenue
Shri S. S. Chattopadhyay, Supdt. (AR) for the Revenue

Ex.Appeal Nos. 76235/14, 75071/16,75134/16,75142/16, 75251/16, 75252/16,76082/16, 75131/16,75229/16 & 75097/16

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 11.01.2019
Date of Decision : 11.01.2019

ORDER NO…FO/A/75063-75072/2019

Per Bench :

The dispute involved in all these appeals is identical and hence, all the appeals are being taken up for a decision through this common order.

2. The details of the various appeals are tabulated below :

Sl. No.	Appeal no.	Party's Name	SCN Date	O/O no. & Date	Period	Amount (Rs.)
1.	76235/2014	Bally Jute Co Ltd	21.05.2014	01/2014-15 dtd 17.07.2014	March 11 to Feb 2013	18,64,37,039/-
2.	75071/2016	The Empire Jute Co Ltd	13.11.2013	11/2015-16 dtd 06.11.2015	Dec 2012 to Feb 2013	1,24,39,326/-
3.	75134/2016	Jagatdal Jute & Ind Ltd	15.01.2014	10/2015-16 dtd 04.11.2015	Jan & Feb 2013	2,11,99,798/-
4.	75142/2016	Kankinarrah Co Ltd	28.01.2014	09/2015-16 dtd 04.11.2015	Jan & Feb 2013	2,36,65,405/-
5.	75251/2016	Naffar Chandra Jute Mills Ltd	15.01.2014	13/2015-16 dtd 01.12.2015	Jan & Feb 2013	1,21,69,809/-
6.	75252/2016	AI Champdany Ind Ltd	29.01.2014	14/2015-16 dtd 01.12.2015	Jan & Feb 2013	2,36,96,984/-
7.	76082/2016	Hooghly Infrastructure Pvt Ltd	31.12.2013	40/15-16 dtd 28.03.2016	Dec 2012 to Feb 2013	9,85,19,747/-
8.	75097/2016	Cheviot Co Ltd	09.07.2014	28/2015 dtd 30.11.2015	01/03/2011 to 26.02.2013	24,74,99,677/-
9.	75131/2016	Alliance Mills Ltd	15.01.2014	07/2015-16 dtd 30.10.2015	Jan & Feb 2013	3,20,45,066/-
10.	75229/2016	Trend Vyapaar Ltd	14.11.2013	12/2015-16 dtd 06.11.2015	Dec 2012 to Feb 2013	2,29,21,005/-

3.1 Brief facts of the case are that all the appellants are manufacturers of jute bags classifiable under Chapter 63 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants were claiming the benefit of Central Excise Notification No.30/2004-CE dated 09.07.2004. The Notification granted exemption to jute bags. The period of dispute is from 01.03.2007 to 20.02.2013, during which the Notification was amended vide Notification No.12/2011-CE dated 01.03.2011. The amendment restricted the exemption to goods other than those bearing brand name or sold under the brand name.

3.2 The jute bags manufactured by the appellants, were required to print on jute bags certain information in terms of orders passed by the Jute Commissioner. These details included the name of the buyers, logo, year of manufacture etc.. Bulk of the jute bags manufactured were supplied to Food Corporation of India as well as various State Government Agency to be used in the Public Distribution System. After noticing the fact that the jute bags were printed with the name of the buyers, such as, Food Corporation of India, the Department was of the view that these jute bags were manufactured and cleared bearing the brand name of the buyers. Accordingly, Departmental Authorities came to the conclusion that the appellants will not be entitled to the benefit of Notification No.30/2004-CE dated 09.07.2004 as it stood amended during the period of dispute. The authorities below have ordered for payment of Central Excise duty without the benefit of the Notification No.30/2004-CE along with interest and penalty. These orders are under challenge in the present proceedings.

4. We have heard various Counsels representing the appellants as well as the Departmental Representatives.

5. Both sides agree that the dispute involved in all the present appeals stands decided by the Hon'ble Supreme Court in the case of RDB Textiles Ltd. Vs. CCEx. & S.Tax, Kol.IV as reported in 2018 (359) ELT 433 (SC). The Hon'ble Apex Court had examined the wordings of the Notification as it stood during the disputed period and decided that the printing of the name, logo and other particulars of buyer, like, FCI and State Governments, were made by the manufacturers to comply with the requirements of Jute Control Order. The Hon'ble Supreme Court further held that the markings on jute bags were under compulsion of law and meant for identification, monitoring and control by Government Agencies and such markings cannot be considered as brand name. Accordingly, the Apex Court held that the benefit of Notification No.30/2004-CE will be available during the disputed period. The observations of the Apex Court are reproduced below :

> "***18.*** *It is obvious that, on the facts of these cases, what is in fact affixed to the jute bags is the name of the procurer agency in question such as the FCI, the State Government of Punjab and so on, the crop year, the name of the jute mill concerned, its BIS certification number and the statement that the food grains are manufactured in India. It is clear that all the*

aforesaid markings have, on the pain of penalty, to be done by the manufacturers of the jute bags, given the Jute Control Order and the requisition orders made thereunder. Obviously, such markings are made by compulsion of law, which are meant for identification, monitoring and control by Governmental agencies involved in the PDS. Neither do such markings enhance the value of the jute bags in any manner nor is it the intention of the appellants to so enhance the value of jute bags, which is necessary if Excise duty is to be imposed. This flows from the expression "...for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark…". In the present case, the markings on the jute bags are not for the purpose of indicating a connection in the course of trade between the jute bag and some person using such name or mark. The markings are by compulsion of law only in order that Governmental Authorities involved in the PDS may identify and segregate the aforesaid jute bags. This being the case, it is obvious that there is no "brand name" involved in the facts of the present cases.

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22. *The facts of these cases are far from the facts in Kohinoor Elastics (supra). In Kohinoor Elastics (supra), it was found that, as a matter of fact, the customer wanted the brand name affixed on the product because he wanted the consumer to know that there is a connection between the product and him. This is very far from the facts of the present case, in that, as has been held* *by us above, it is clear that the markings required on the jute bags are compulsory, being required by the Jute Commissioner, and are not for the purpose of enhancing the value of the jute bags by indicating a connection in the course of trade between the aforesaid products and the manufacturer of those products."*

6. Since the issue has been decided by the Apex Court, by respectfully following the ratio of the Apex Court, we allow all the appeals. Ordered accordingly.

(Dictated and pronounced in the open court.)

Sd/
(P.K.Choudhary)
Member (Judicial)

Sd/
(V.Padmanabhan)
Member (Technical)

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