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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 72077 of 2013

(Arising out of Order-in-Appeal Nos. 112-113/KOL-II/2012 dated 05.11.2012 passed by the Commissioner of Central Excise (Appeals), Kolkata-III, Kendriya Utpad Shulk Bhawan, 180, Shantipally, R.B. Connector, Rajdanga Main Road, 6th Floor, Kolkata – 700 107)

M/s. Sumangal Polymers Private Limited **: Appellant**
103/20, Foreshore Road,
Shibpur, Howrah – 711 102

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-II Commissionerate,
15/1, Strand Road, 2nd Floor, Kolkata – 700 001

AND

Excise Appeal No. 72078 of 2013

(Arising out of Order-in-Appeal Nos. 112-113/KOL-II/2012 dated 05.11.2012 passed by the Commissioner of Central Excise (Appeals), Kolkata-III, Kendriya Utpad Shulk Bhawan, 180, Shantipally, R.B. Connector, Rajdanga Main Road, 6th Floor, Kolkata – 700 107)

Shri Shyam Agarwal, Director, **: Appellant**
M/s. Sumangal Polymers Private Limited
103/20, Foreshore Road,
Shibpur, Howrah – 711 102

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-II Commissionerate,
15/1, Strand Road, 2nd Floor, Kolkata – 700 001

APPEARANCE:

Shri N.K. Chowdhury, Advocate for the Appellant(s)

Shri S.S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76072-76073 / 2024

DATE OF HEARING / DECISION: 06.06.2024

ORDER : [PER SHRI ASHOK JINDAL]

The appellants are in appeal against the impugned order demanding jute cess from the appellant-company and imposing penalty on both the appellants.

2. The facts of the case are that the appellant has manufactured and cleared HDPE/PP bags and cloths. It is alleged that the appellant had cleared jute bags without payment of jute cess in terms of Section 11A of the Central Excise Act, 1944. It was also alleged that the appellant had suppressed these facts and did not reverse the CENVAT Credit against the debit notes.

2.1. The appellant replied to the Show Cause Notice, but the demand *inter alia* on account of non-payment of jute cess was confirmed for the period 2002-2005 and penalty of an equivalent amount was also imposed. Penalty on the appellant no. 2 viz. Shri Shyam Agarwal, was also imposed under Rule 26 of the Central Excise Rules, 2002.

3. Today, when the matter was called, the Ld. Counsel appearing on behalf of the appellants submits that the issue stands squarely covered by the decision of this Tribunal in the case of *Royal Touch Fablon (P) Ltd. v. Commissioner of Central Excise, Kolkata-IV [Final Order No. A-222/KOL/09 dated 17.04.2009 in Excise Appeal No. 404/2005 – CESTAT, Kolkata]=[2009 (248) E.L.T. 382 (Tri. – Kol.)]*; the said order has been affirmed by the Hon'ble High Court of Calcutta in Central Excise Appeal No. 65 of 2009 vide Order dated 03.03.2010. Therefore, it is prayed that the impugned order be set aside and the appeals be allowed.

3.1. He further submits that the appellant is paying cess on the Hessian cloth and therefore, there is no requirement to pay duty at the stage of jute bags which are made out of the cess paid on the Hessian cloth, as cess is payable only once and not at every stage.

4. On the other hand, the Ld. Authorized Representative for the Revenue reiterated the findings in the impugned order.

5. We find that the issue involved in the present appeals is as to whether the appellant, who has paid cess at the stage of manufacturing of Hessian cloth, which was converted into jute bags, is liable to pay jute cess at the stage of making the jute bags or not. The said issue has been examined by this Tribunal in the case of *Royal Touch Fablon (P) Ltd. (supra)* wherein it was observed as under: -

> *"2. The Counsel for the appellants contends that the intention under the Cess Act is to charge cess only once. In this regard, he cites the Calcutta II Collectorate Trade Notice dated 30-9-88 which clarifies that the intention right from the inception of cess on jute product was to levy cess only once. He states that this clarification was issued in the context of laminated jute bags and the laminated jute fabrics made from fabrics on which cess has been already paid. He also cites two Notifications dated 8-11-96 and 17-5-02 under which exemption has been provided to ensure that the cess is not collected at two stages. It is the contention of the ld. Counsel that the Larger Bench decision in the case of N. Ramanjaneyulu & Bros. v. Commissioner of Central Excise, Guntur - 2004 (173) E.L.T. 471 (Tri.-LB) does not take into account the exemption notification issued under Jute Manufactures Cess Act, 1983 and as such, the ratio of the same is not applicable to the period when the exemption notifications cited above were in force during the material period covered by this case. The ld. Counsel also places reliance on the decision of this Bench in the case of Commissioner of Central Excise, Siliguri v. Mall Eximp (P) Ltd. - Order No. M-183-185/Kol/08, dated 30-6-08 [2008 (227) E.L.T. 619 (T)] in which cognizance has been taken of the scheme of exemption and it has been held that once the cess is paid, further demand of cess is not justified.*

> *3. After hearing both sides and perusing the cited decisions, we find that the Larger Bench decision was rendered without taking into cognizance the existence of exemption notification issued under the Jute Manufactures Cess Act, 1983. The exemption notifications and the departmental clarifications issued under the cited Trade Notice, make it very clear that the intention is to levy cess only once. Since, in the present case, the cess has already been levied on jute fabrics, the demand for cess on laminated fabrics and the laminated bags is not justified keeping in view the scheme of levy of cess under the Act and the exemptions and clarifications issued thereunder. Hence, the impugned order is set aside and the appeal is allowed."*

5.1. From the above decision, we find that it has been held by the Tribunal that if cess has been paid at the stage of manufacturing of Hessian cloth, no jute cess is payable at the stage of manufacturing of jute bags out of the cess paid on Hessian cloth. The said view has also been affirmed by the Hon'ble Calcutta High Court. In view of this, we hold that the appellant is not liable to pay jute cess on the jute bags manufactured out of the cess paid on the Hessian cloth.

6. In view of the above, we set aside the impugned order and allow the appeals with consequential relief, if any.

(Operative part of the order was pronounced in open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd