

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: E/615/2012

[Arising out of Order-in-Appeal No: P-II/RKS/20/2012 dated 18th January 2012 passed by the Commissioner of Central Excise (Appeals), Pune – II.]

Digvijay Textiles Private Limited

...Appellant

versus

Commissioner of Central Excise & Service Tax
Kolhapur

...Respondent

Appearance:

Shri N S Patel, Advocate for appellant

Shri N N Prabhudesai, Superintendent (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 13/07/2017

Date of decision: 13/07/2017

ORDER NO: A/ 92313 / 2017

The appellant disputes duty liability of ₹ 2,74,349/- fastened on them along with equal amount of penalty for the period January 2004 to March 2004 being the CENVAT credit availed on goods supplied by M/s Natraj Textile Processors Pvt Ltd who had not discharged

duty liability. Commissioner of Central Excise (Appeals), Pune – II *vide* order-in-appeal no. P-II/RKS/20/2012 dated 18th January 2012 upheld the denial of CENVAT credit and recovery thereon ordered by the original authority.

2. It appears from the records that the appeal of the appellant had been allowed in the first instance by the first appellate authority and on appeal by Revenue, the matter was remanded back by the Tribunal to the first appellate authority. The first appellate authority, thereafter, upheld the order of the lower authority in *ex-parte* proceedings.

3. It is the contention of Learned Counsel for appellant that the impugned order was passed without reference to the records and their submissions that had been made during the first round of appeals. It is an admitted fact that the appellant had not participated in the proceedings before the first appellate authority. The appeal now preferred against the order assails the findings therein merely on the ground that the proceedings on record during the earlier round should have been taken into consideration as that would have explained the position and the reasons of their contention in the earlier round.

4. The initial order of the first appellate authority having been set aside and the matter remanded for fresh determination the entire proceedings in the appeal stood extinguished. The sole ground of

appeal of the appellant that those submissions made earlier should have been taken on record in the impugned proceedings is not sustainable in law. It was the responsibility of the appellant to have made appropriate plea before the appellate authority in remand proceedings. Having failed in doing so, and in view of the first appellate authority having given detailed findings to uphold the order of the adjudicating authority, there is no merit in the appeal before the Tribunal.

5. Accordingly the appeal is dismissed.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

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