IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal Nos. 92/2010, E/369 to 372/2010 E/378,387, 396, 397, 402, 417/2010

(Arising out of Order-in-Original No. 50/BR-46/Th-I/2009 dt. 9.12.2009 passed by the Commissioner of Central Excise, Thane-I)

Daily Textiles : **Appellant**
Annapurna Dyeing And Printing Mills P. Ltd.
Govind Karnani
Sanjay Lalwani
Jyoti Alias Bindiya Govind Karnani
Kiran Knit Inds. P. Ltd.
Arkap Kinits Pvt. Ltd.
Cisons Exports Pvt. Ltd.
West Coast Industries
Suditi Industries Ltd.
R.R. Enterprises

VS

Commissioner of Central Excise Thane-I, Mumbai-I : **Respondent**

Appearance

Shri D.H. Nadkarni Advocate,
Shri V.N. Ansurkar Advocate
Shri S.R. Nair, Consultant,
Shri C.S. Biradar Advocate,
Shri Arun Mehta Advocate &
Shri P.K. Shetty, Advocate for Appellants

Shri A.B. Kulgod, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of hearing : 04/09/2018
Date of decision : 04/09/2018

ORDER NO. A/87250-87260/2018

Per : Dr. D.M. Misra

These appeals are filed against order-in-original No. 50/BR-46/Th-I/2009 dt. 9.12.2009 passed by the Commissioner of Central Excise, Thane-I.

2. Briefly stated the facts of the case are that M/s. Annapurna Dyeing and Printing Mills Pvt. Ltd. had been engaged in processing of various types of fabrics. Alleging that the appellant had processed and cleared manmade fabrics in the guise of cotton fabrics, show cause notice was issued to them for recovery of the Central Excise duty not paid during the period May 1997 to March 2001, amounting to Rs.37,75,536/- along with interest and penalty; also show cause notices were issued to other notices proposing penalty under Rule 209A of erstwhile Central Excise Rules, 1944. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeals.

3. Ld. Advocate Shri D.H. Nadkarni for the appellants has submitted that on carrying out necessary test of the samples drawn from the factory premises of the appellants; out of ten samples, eight samples were certified to be of 100% cotton. It is his contention that on receipt of the show cause notice they have requested the department for supply of relied upon documents from time to time; the said correspondence are enclosed with appeal memorandum (Pages 286 to 289). These documents are vital for their defense and without the same their reply to the allegations in the notice would not be possible. Further, he has submitted that these documents were never supplied to them and

Ld. Adjudicating Authority proceeded with the adjudication and confirmed the demand. He submits that for preparation of reply and defend their case, analysis of these documents is necessary. He submits that the appellants are prepared to bear necessary copying charges for the documents requested.

4. Learned A.R. for the Revenue reiterates the findings of the Ld. Commissioner. He has submitted that inspite of sufficient opportunities allowed to the appellants to collect the documents, the same were not collected.

5. In his rejoinder, rebutting the said charge, the Ld. Advocate has submitted that the appellants have entered into correspondence from time to time for supply of these documents and brought to the notice of the authorities that in spite of their visit to the Kalyan Office for collection of these documents, the same were not handed over to them.

6. Heard both sides and perused the records. Undisputedly the Ld. Commissioner has decided the issue on the basis of the records available, since the appellants had failed to file their reply to the show cause notice. It is the grievances of the appellants that the documents which were seized from their premises, even though relevant for the purpose for preparation reply to the show cause notice , the same were not handed over to them in spite of repeated visits by their representative to the concerned office. To resolve the dispute, we are of the opinion that the appellants be provided copies of the documents as requested by them, as mentioned in their various letter (Pages 285 to 289), and the appellants would

bear the necessary copying charges as agreed by the Ld. Advocate Consequently, we direct the department to supply all these documents within one months from the date of communication of this order and thereafter the appellants should file their reply to the notice within one months from the date of receipt of the relevant documents. Ld. Advocate assured the Bench that they would participate in the adjudication proceeding without seeking unwarranted and unnecessary adjournment. In any case, it is expected that the *denovo* proceeding should complete within four months from the date of communication of this order. All issues are kept open. Appeals are allowed by way of remand.

(Operative portion of the order pronounced in court)

(Sanjiv Srivastava) ***(Dr. D.M. Misra)***
Member (Technical) ***Member (Judicial)***

SM.