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

APPEAL No.E/19/2009, E/203, 204 & 205/2009

(Arising out of Order-in-Appeal No.YG/111 to 122/Th-I/08 dated 06/10/2008 passed by the Commissioner of Central Excise (Appeals) Mumbai)

Commissioner of Central Excise : **Appellant**
Thane-I

VS

Shree New India Processors : **Respondent**
Navbharat Industries

Appearance

Shri.Ajay Kumar, Addl. Comm. (AR) for Appellant
Shri.Gajendra Jain, Advocate for respondent

CORAM:

Hon'ble Shri C.J. Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing : 26/07/2018
Date of pronouncement : /2018

ORDER NO.87606-87609/2018

Per : **C.J. Mathew**

1. We dispose off four appeals of Revenue against order-in-appeal no.YG/111 to 122/Th-I/08 dated 6th October 2008 of Commissioner of Central Excise (Appeals), Mumbai, which has been decided in favour of M/s Shree New India Processors and M/s Navbharat Industries. All these relate to the 'cotton fabrics' processed out of exempted 'grey fabrics' and on which duty liability of 4% and 8% was discharged, under notification no.29/2004-CE dated 9th July 2004, on clearance to merchant exporters against disclaimer certificate which was used to claim the rebate eligible therein. It is the submission of Revenue that notification no.30/2004-CE

dated 9th July 2004 permitted clearance of goods without payment of duty and that the amount of duty that has been collected by the appellants from their customers, but liability thereof discharged by debit in CENVAT credit account, is recoverable.

2. On perusal of the records pertaining to the different appeals, we find that M/s Navbharat Industries was issued with five show-cause notices for recovery of Rs.14,50,429/-, of Rs.10,42,240/-, of Rs.9,63,266/-, of Rs.18,09,053/- and of Rs.16,34,829/-. Likewise, M/s Shree New India Processors were issued with a single show-cause notice for recovery of Rs.4,70,460/- and of Rs.3,94,164/-.

3. We have heard the Learned Counsel for the respondents and Learned Authorised Representative.

4. It is seen that the proceedings against M/s Shree New India Processors involved a duty liability of Rs.8,64,624/- which, though confirmed by the original authority, was set aside by the first appellate authority following which Revenue is in appeal. Likewise various demands that were dropped in the original order against M/s Navbharat Industries is also less than Rs.20,00,000/-.

5. It is seen that each of the confirmed demands arising from the different show-cause notices was for recovery of amounts below Rs.20 lakhs. Normally each show-cause notice should have been disposed off by a separate order-in-original but, for the sake of convenience where the issues are common , it is usual practice to issue a combined order-in-original, with as many numbers as correspond to the number of show-cause notice thus disposed off, but the original authority appears to have combined all those. Nevertheless, the first appellate authority has assigned separate number

for each order-in-appeal corresponding to each show-cause notice. Consequently, notwithstanding the convention that permits Revenue to file common appeal, each of the numbered appeals must be dealt with separately. Accordingly, in disposing off these separate appeals, we find that the litigation policy of Government of India notified in F.No.390/Misc./163/2010-JC dated 17th December 2015 of Central Board of Excise & Customs, New Delhi, and enhanced by amendment dated 11th July 2018 are taken to that the monetary limits for pursuing of appeals before the Tribunal has not been crossed in each of these disputes. We dismiss the appeals of Revenue against M/s Shree New India Processors and M/s Navbharat Industries.

(Pronounced in Court on...........................)

(Ajay Sharma)
Member (Judicial)

(C.J. Mathew)
Member (Technical)

PJ