

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I**

APPEAL No. E/1310/2010

(Arising out of Order-in-Appeal No. YDB/194/MII/2010 dated 5.4.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-II)

Universal Knitting Mills Pvt. Ltd.

Appellant

Vs.

Commissioner of Central Excise, Mumbai-II

Respondent

Appearance:

Shri Prakash Shah, Advocate, for appellant

Shri A.B. Kulgod, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 03.12.2018

Date of Decision: 03.12.2018

ORDER No. **A/88309/2018**

Per: Sanjiv Srivastava

This Appeal is directed against the Order in Appeal No YDB/194/RGD/ 2010 dated 05.04.2010 of Commissioner Central Excise (Appeals) Mumbai Zone II. By the said order Commissioner (Appeal) has upheld the order of adjudicating authority holding as follows:

"ORDER

(1) Out of the demand of Rs.3,60,112/- raised vide SCN No.V.Adj/Vikh.Dn./CR-02/UKM/CR-2/04 dated 07.05.2004

(for April to June, 2003), the amount of Rs.1,70,476/- is confirmed on the basis of the working as discussed hereinabove and the amount of Rs.1,29,558/- debited by M/s. Universal Knitting Mills Pvt. Ltd. against the said demand on 06.12.2007 is ordered to be appropriated against the same. M/s. Universal Knitting Mills Pvt. Ltd. are directed to pay the differential amount of Rs.40,918/- forthwith.

(2) Out of the demand of Rs.4,87,041/- raised vide No.V.Adj/Vikh.Dn./CR-05/UKM/CR-5/04 dated 03.08.2004 (for July to August, 2003), the amount of Rs.2,55,415/- is confirmed on the basis of the working as discussed hereinabove and the amount of Rs.1,27,251/- debited by M/s. Universal Knitting Mills Pvt. Ltd. against the said demand on 06.12.2007 is ordered to be appropriated against the same. M/s. Universal Knitting Mills Pvt. Ltd. are directed to pay the differential amount of Rs.1,28,164/- forthwith.

(3) Out of the demand of Rs.1,65,164/- raised vide No.V.Adj/Vikh.Dn./CR-08/04 dated 06.10.2004 (for September, 2003), the amount of Rs.82,449/- is confirmed on the basis of the working as discussed hereinabove and the amount of Rs.61,884/- debited by M/s. Universal Knitting Mills Pvt. Ltd. against the said demand on 06.12.2007 is ordered to be appropriated against the same. M/s. Universal Knitting Mills Pvt. Ltd. are directed to pay the differential amount of Rs.20,565/- forthwith.

(4) Out of the demand of Rs.2,45,615/- raised vide No.V.Adj/Vikh.Dn./CR-02/UKM/CR-10/04 dated 02.11.2004 (for October to November, 2003) the amount of Rs.1,12,837/- is confirmed on the basis of the working as discussed hereinabove and the amount of Rs.84,298/- debited by M/s. Universal Knitting Mills Pvt. Ltd. against the said demand on 06.12.2007 is ordered to be appropriated against the same. M/s. Universal Knitting Mills Pvt. Ltd. are directed to pay the differential amount of Rs.28,539/- forthwith.

(5) Out of the demand of Rs.2,85,148/- raised vide No.V.Adj/Vikh.Dn./R-02/UKM/CR-17/04 dated 04.01.2005

(for December-2003 and January, 2004) the amount of Rs.1,46,460/- is confirmed on the basis of the working as discussed hereinabove and the amount of Rs.1,04,749/- debited by M/s. Universal Knitting Mills Pvt. Ltd. against the said demand on 06.12.2007 is ordered to be appropriated against the same. M/s. Unibersal Knitting Mills Pvt. Ltd. are directed to pay the differential amont of Rs.41,711/- forthwith.

(6) Out of the demand of Rs.2,98,611/- raised vide No.V.Adj/Vikh.Dn./R-02/UKM/CR-19/04 dated 07.03.2005 (for February to March, 2004) the amount of Rs.1,42,470/- is confirmed on the basis of the working as discussed hereinabove and the amount of Rs.1,16,222/- debited by M/s. Universal Knitting Mills Pvt. Ltd. against the said demand on 06.12.2007 is ordered to be appropriated against the same. M/s. Unibersal Knitting Mills Pvt. Ltd. are directed to pay the differential amont of Rs.26,248/- forthwith.

(7) Out of the demand of Rs.2,45,615/- raised vide No.V.Adj/Vikh.Dn./R-02/UKM/CR-2/04 dated 04.05.2005 (for April to 07.07.2004) the amount of Rs.1,38,639/- is confirmed on the basis of the working as discussed hereinabove and the amount of Rs.1,22,714/- debited by M/s. Universal Knitting Mills Pvt. Ltd. against the said demand on 06.12.2007 is ordered to be appropriated against the same. M/s. Unibersal Knitting Mills Pvt. Ltd. are directed to pay the differential amont of Rs.15,925/- forthwith.

(8) I order recovery of interest at the appropriate rate on the amounts confirmed at Sr.No. (1) to (7) of the order above under the provisions of Section 11AB of the Central Excise Act, 1944.

(9) I refrain from imposing any penalty on M/s. Universal Knitting Mills Pvt. Ltd. in view of above findings."

2.1 Appellants are job workers processing man made fabrics for their principals. During the period April 2003 to July 2007, it was observed that that they were

clearing the processed fabric on payment of Central Excise duty, without including the shrinkage factor @ 4.2% while determining the assessable value of processed fabric at the time of clearance.

2.2 Accordingly Seven Show Cause Notices have been issued to them as detailed in table 1, for demanding the duty so short paid.

| Sr. No. | Show Cause Notice No. and date | Amount involved (BED + AED) (in Rs.) | Period covered |
|---------|---|--------------------------------------|-------------------------------|
| 1 | V.Adj/Vikh.Dn./R-02/UKM/CR-2/04 dated 07.05.2004 | 3,60,112/- | April to June 2003 |
| 2 | V.Adj/Vikh.Dn./R-02/UKM/CR-5/04 dated 03.08.2004 | 4,85,041/- | July to August 2003 |
| 3 | V.Adj/Vikh.Dn./R-02/UKM/CR-8/04 dated 06.10.2004 | 1,65,164/- | September 2003 |
| 4 | V.Adj/Vikh.Dn./R-02/UKM/CR-10/04 dated 02.11.2004 | 2,45,615/- | October to November 2003 |
| 5 | V.Adj/Vikh.Dn./R-02/UKM/CR-17/04 dated 04.01.2005 | 2,85,148/- | December 2003 to January 2004 |
| 6 | V.Adj/Vikh.Dn./R-02/UKM/CR-19/04 dated 07.03.2005 | 2,98,611/- | February to March 2004 |
| 7 | V.Adj/Vikh.Dn./R-02/UKM/CR-2/04 dated 04.05.2004 | 2,70,470/- | April 2004 to 07.07.2004 |

2.3 These show cause notices were adjudicated by the adjudicating authority vide his order in original No 21/AC. Vikhroli/06-07 dated 26.02.2007. Against this

order appellants filed the appeal before Commissioner (Appeals). Commissioner (Appeals) allowed the appeal and remanded matter back to adjudicating authority for fresh consideration vide his order in appeal No SRK/378/M-II/2007 dated 15.10.2007.

2.4 In remand proceedings adjudicating authority has decided the matter afresh as per the order referred in para 1, supra. Against this order of adjudicating authority appellants filed the appeal before Commissioner (Appeal), which has been dismissed.

2.5 Aggrieved by the order of Commissioner (Appeal), appellants have preferred this appeal before tribunal.

3.1 In their appeal appellants have assailed the order of Commissioner (Appeal) stating-

- i. During the period of dispute i.e. from the 31.03.2003, the valuation of processed fabric was to be done as per Trade Notice No 14/CEX/Textile/(1)/03 dated 31.03.2003 (CBEC Circuklar No 703/19/2003-CX). As per the said trade notice *"the duty would be worked out on the value calculated on the basis of the price of inputs i.e. yarn or grey fabrics plus the actual job charges."*
- ii. Appellants submitted the value for determination of the duty was calculated by them following the

said trade notice. However lower authorities while adjudicating the case have relied upon the earlier trade Notice issued prior to 31.03.2003, for demanding and confirming the demand of duty against them.

iii. It is settled law that that the circular/ instructions issued by the CBEC are binding on the departmental authorities. They rely upon various authorities listed below in support of the said preposition-

a. Paper Products Ltd [1999 (112) ELT 765 (SC)]

b. Ranadey Micronutrients [1996 (87) ELT 19 (SC)]

c. Dhiren Chemical Industries {2002 (139) ELT 3 (SC)]

d. IOC Ltd [2004 (165) ELT 257 (SC)]

e. Tega India Ltd [2004 (164) ELT 390 (SC)]

iv. Thus the demand notices and the orders of adjudicating authority/ appellate authority which are contrary to the said circular are bad in law.

v. Commissioner (Appeal) has deided the matter against them only on the sole ground that trade Notice 14/CEX/2003/MII dated 31.03.2003 has not abrogated the previous trade notices.

vi. Order of adjudicating authority travels beyond the scope of show cause notice, because show cause notice was for adding 4.2% towards the shrinkage allowance for determining the assessable value, whereas adjudicating authority has confirmed the demand by adding the actual shrinkage which is in excess of 4.2% for determining the assessable value. Since the adjudication order has travelled beyond the scope of show cause notice it is bad in law.

4.1 We have heard Shri Prakash Shah Counsel for the Appellant and Shri K B Kulgod, Assistant Commissioner (Authorized Representative) for the revenue.

4.2 Learned Counsel arguing for the appellant submitted that issue involved in the matter is with regards to the addition of notional figure of 4.2% toward the shrinkage allowance for determining the assessable value of the processed fabric. He submitted that since the value has been determined taking into account the quantum and value of the grey fabric as received, the shrinkage factor has already been included in the value of processed fabric. He showed the Annexure B to Show Cause notice dated 3rd August 2004, wherein in column 'b' the quantity of grey fabric received lot wise has been indicated. Further in column 'c' an addition of 4.2% has been made to the grey received to determine the duty

short paid. In his view column 'c' shows the quantity of grey fabric which was over and above the grey fabric received by them and indicated in column 'b'. Thus in his view the differential duty demanded on the basis of quantity received + 4.2 percent of grey received is not correct in law and needs to be set aside. He also relied upon the following decisions:

- i. Sidharth Processors [2004 (171) ELT 282 (T)];
- ii. Sp[ecial Prints Ltd [2003 (158) ELT 428]
- iii. Ujjagar Prints [1989 (39) ELT 493 (SC)]
- iv. Ramkumar MillsPvt Ltd. [2005 (183) ELT 356 (T-LB)]
- v. Indian Rayon & Indus Ltd [2002 (150) ET 388 (T)].

4.3 Learned Authorized Representative arguing for the revenue submitted that tribunal has in case of Special Prints [1999 (95) ELT 864 (T)] has held that Shrinkage Value needs to be added to determine the assessable value. This decision of the Tribunal has been upheld by the Apex Court as reported at [199 (111) ELT A63 (SC)]. He also submitted the trade notice No 46/2002 dated 18.11.2007 issued by the Mumbai II, *"The shrinkage of man made fabrics would be taken as the same as was being done earlier i.e. @ 4%. Therefore the shrinkage factor would be 1.042, where the actual shrinkage is significantly higher than the average 4%, the general practice was that the cost was worked out on the basis of*

actual shrinkage. This practice will continue." Since this trade notice was not withdrawn/ abrogated by the subsequent trade notice Commissioner (Appeal) was right in relying upon the same for upholding the demand

5.1 We have considered the submissions made in appeal and during the course of argument.

5.2 Commissioner (Appeal) has vide his order in appeal No SRK/378/M-II/2007 dated 5.10.2007, remanded the matter back to adjudicating authority with following observations-

"I have gone through the case records and appellant's submission. There is no dispute as regards addition of job charges and other elements. The only dispute is adopting the method for loading on account of shrinkage factor. In the instant case it is to be decided whether the duty demand has been calculated by the lower authority as per the Trade Notice and Supreme Court's judgment in Ujjagar Prints Vs UOI or not. I find that the method adopted by the department by increasing 4.2% shrinkage in the quantity of received grey fabrics is totally wrong. As per Trade Notice shrinkage element is to be added in the value @ 4.2% while calculating assessable value of processed fabrics. Accordingly, the impugned demand cannot be sustained and has to be remanded to the original authority for re-adjudication of the demand. The impugned order is accordingly set aside. Appropriate orders regarding penalty shall also be passed after determination of the duty short paid."

5.2 5.4 In para 11 and 12, Adjudicating Authority records as follows:

"11. Since , the Order in Appeal passed by the Commissioner (Appelas) has been accepted by the Commissioner of Central Excise Mumbai II on 16.11.2007 as is evident from the letter under F No V (Universal) Trb-33/Apl.Commr/07-08/Vikh/837 dated received from the Supdt C Ex (tribunal), Mumbai II on 16.11.2007, I accept the orders and directions of the Commissioner (Appeals) and accordingly, I find that the addition of the shrinkage factor in the assessable value of the processed fabrics declared by the noticee is to be done as per the Trade Notice No 14/CEX/Textile (1)/03 Dated 31.03.2003 issued by the Commissioner of Central Excise, Mumbai-II in this regard.

12. As per para (1) of the above referred Trade Notice, in case, the job worker i.e. a weaver or processor prefers to clear goods on payment of duty (even if he is actually undertaking job work and is not actually selling the goods back to the trader) the duty would be worked out on the value calculated on the basis of the price of the inputs i.e. yarn or grey fabric price plus the actual job charges. Further, as per para 4 of the Trade Notice No 46/Gen/ Valuation (3)/2002 dated 18.11.2002 issued by the Commissioner of Central Excise Mumbai-II, the 'shrinkage factor' in respect of the processed fabrics has to be taken into consideration as part of raw material cost and the actual quantification has to be done as per prevailing practice/ data. The cost of raw material would include all cost incurred for bringing the raw material to the premises of the job workers. The prevailing practice as referred in the above trade notice was described in the Trade Notice No 65/2002 dated 30.09.2002 issued by

the Commissioner of Central Excise Mumbai-IV when the average shrinkage was taken as 4% and as such, the shrinkage factor was allowed to be taken as 1.042. However, it was also made clear in the said trade notice that where the actual shrinkage is significantly higher than the average of 4%, the general practice of working out the cost on the basis of actual shrinkage will continue."

5.4 From the above referred paras of the order of adjudicating authority the fallacy in reasoning adopted is quite evident. While the Trade Notice 46/2002, at para 4 stated *"As regards, determination of shrinkage factor" in respect of processed fabrics the same has to be taken into consideration as part of raw material cost and the actual quantification done as per prevailing practice/ data. The cost of raw material would include all cost incurred for bringing the raw material to the premise of the job worker and this applies to all commodities."* The said trade notice only provides for determination of the landed cost of the grey fabric received and is in no way providing for enhancement the quantity of the grey fabric received or the landed cost of grey fabric received by the shrinkage factor. Further the said trade notice is issued prior to the Trade Notice No 14/CEX/Textile (1)/03 Dated 31.03.2003 and cannot be made applicable to determination of the landed cost of grey fabric received in terms of the subsequent trade notice.

5.5 If the scheme as laid down by the trade Notice No 65/2002 read with Trade Notice No 46/2002 is read in proper perspective then we will conclude that scheme of valuation as per the said two trade notices and trade notice of 31.03.2003 are identical. Before the matter is taken up for further discussion it is necessary to have a look at the manner of calculation of demand in the show cause notice. The manner in which show cause notice had proceeded to determine the differential duty has been held to erroneous by the Commissioner (Appeal) while remanding the matter back to jurisdictional Assistant Commissioner. Annexure A and first page of Annexure B (running into 28 pages) to Show Cause Notice dated 3rd August 2004 are reproduced below:

ANNEXURE-A

M/s Universal Knitting Mills Pvt. Ltd, Mehera Estate, Asha-Usha compound L.B.S. Marg, Vikroli (W) Mumbai-400 079 having Central Excise Registration No. AAA CU 1951 HX M001 (hereinafter called the "assessee") are engaged in the manufacturing of man made processed fabrics falling under chapter heading 52, 54, 55 and 60 of Central Excise Tariff Act, 1985 (hereinafter referred to as the 'said goods') on job work basis, have contravened the provisions of Rule 4,6 and 8 of the Central Excise Rules, 2002 as well as the provisions of section 4 of Central Excise Act, 1944 read with 6 and 11 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2002 in as much as they have manufactured and cleared processed fabrics by not including the shrinkage factor @ 4.2% while determining the assessable value at the time of clearance of the processed fabrics as required as per Mumbai -II Trade Notice no 46 2002 dated 18.11.2002.

During the period from 1.7.2003 to 31.08.2003, the assessee has short paid duty Rs. 4,85,041 - - (Rupees four lac eighty five thousand fourty one only) by not adding the shrinkage factor as below (As detailed in Annexure B).

Details of short payment

| Month | BED | AED | Total |
|-----------|-------------|-----------|------------|
| July-03 | 168902.28 | 42225.57 | 211127.85 |
| August-03 | 219131.18 | 54782.80 | 273913.98 |
| Total | 3,88,033.00 | 97,008.00 | 4,85,041/- |

The said amount is demandable and recoverable from the assessee under section 11 A of the Central Excise Act, 1944. The interest at the appropriate rate is also chargeable and recoverable from the assessee under section 11 AB of the Central Excise Act, 1944. The assessee is liable for penal action under section 11 AC of the Central Excise Act, 1944. The assessee is also liable for penal action under Rule 25 of Central Excise Rules, 2002.

M.K. Arora
31/8/03
M. K. ARORA
DEPUTY COMMISSIONER
CENTRAL EXCISE VIKHROLI DIVISION
MUMBAI-II.

Shubhoj
2.8.04
निरीक्षक के. 35. शुल्क,
Inspector, Central Excise
खंड - II, विक्रोली मंडल, पुणे - II
Range - II, Vikroli Div, Mumbai - II.

31/8/03
अधीक्षक, सुपरिन्टेंडेंट
के. ज. शुल्क विभाग, पुणे - II
Central Excise, Superintendent
खंड-II, मुंबई-II

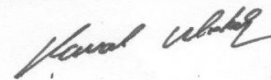
UNIVERSAL MILLS

For UNIVERSAL KNITTING MILLS PVT. LTD

ANNEXURE-B

JULY, 2003

| Lot No. | Grey received Mtrs | 4.2% of grey added in grey received | Processed goods delivered. Mtrs | Diff. quantity | Grey Rate | Differential value | Differential duty |
|---------|-----------------------|---|--|-------------------|--------------|-----------------------|----------------------|
| a | b | c c=bx0.042+b | d | e e=c-d | f | g g=exf | h h=(gx0.1) |
| 002215 | 3011.00 | 3137.48 | 2646.50 | 490.98 | 21.83 | 10717.70 | 1071.77 |
| 002217 | 1230.75 | 1282.44 | 839.75 | 442.69 | 14.36 | 6357.05 | 635.70 |
| 002218 | 335.75 | 349.85 | 316.25 | 33.60 | 18.00 | 604.83 | 60.48 |
| 002219 | 341.00 | 355.32 | 298.75 | 56.57 | 18.00 | 1018.30 | 101.83 |
| 002220 | 318.25 | 331.62 | 310.00 | 21.62 | 18.00 | 389.10 | 38.91 |
| 002221 | 1225.00 | 1276.45 | 1018.00 | 258.45 | 16.45 | 4251.50 | 425.15 |
| 002222 | 97.25 | 101.33 | 96.50 | 4.83 | 48.00 | 232.06 | 23.21 |
| 002223 | 82.50 | 85.97 | 79.75 | 6.22 | 48.00 | 298.32 | 29.83 |
| 002224 | 240.75 | 250.86 | 239.25 | 11.61 | 48.00 | 557.35 | 55.74 |
| 002226 | 80.75 | 84.14 | 80.50 | 3.64 | 48.00 | 174.79 | 17.48 |
| 002228 | 101.25 | 105.50 | 98.75 | 6.75 | 48.00 | 324.12 | 32.41 |
| 002229 | 101.50 | 105.76 | 100.50 | 5.26 | 48.00 | 252.62 | 25.26 |
| 002230 | 76.75 | 79.97 | 76.00 | 3.97 | 48.00 | 190.73 | 19.07 |
| 002231 | 64.50 | 67.21 | 63.50 | 3.71 | 48.00 | 178.03 | 17.80 |
| 002233 | 106.50 | 110.97 | 105.25 | 5.72 | 32.00 | 183.14 | 18.31 |
| 002234 | 107.00 | 111.49 | 97.50 | 13.99 | 32.00 | 447.81 | 44.78 |
| 002235 | 106.00 | 110.45 | 105.00 | 5.45 | 32.00 | 174.46 | 17.45 |
| 002236 | 108.00 | 112.54 | 107.25 | 5.29 | 32.00 | 169.15 | 16.92 |
| 002237 | 97.50 | 101.60 | 95.75 | 5.85 | 32.00 | 187.04 | 18.70 |
| 002243 | 710.00 | 739.82 | 632.25 | 107.57 | 26.00 | 2796.82 | 279.68 |
| 002249 | 1272.00 | 1325.42 | 1255.25 | 70.17 | 32.40 | 2273.64 | 227.36 |
| 002250 | 10.00 | 10.42 | 8.50 | 1.92 | 28.30 | 54.34 | 5.43 |
| 002253 | 3274.25 | 3411.77 | 3008.25 | 403.52 | 24.67 | 9954.80 | 995.48 |
| 002254 | 1223.00 | 1274.37 | 1143.50 | 130.87 | 25.00 | 3271.65 | 327.17 |
| 002255 | 413.50 | 430.87 | 397.25 | 33.62 | 25.00 | 840.43 | 84.04 |
| 002256 | 410.50 | 427.74 | 384.25 | 43.49 | 25.00 | 1087.28 | 108.73 |
| 002257 | 309.75 | 322.76 | 294.25 | 28.51 | 25.00 | 712.74 | 71.27 |
| 002258 | 590.75 | 615.58 | 576.50 | 39.08 | 25.00 | 976.54 | 97.65 |
| 002259 | 397.25 | 413.93 | 329.00 | 84.93 | 25.00 | 2123.36 | 212.34 |
| 002260 | 611.75 | 637.44 | 585.50 | 51.94 | 26.00 | 1350.53 | 135.05 |
| 002261 | 408.25 | 425.40 | 391.25 | 34.15 | 26.00 | 887.81 | 88.78 |
| 002262 | 608.25 | 633.80 | 586.00 | 47.80 | 26.00 | 1242.71 | 124.27 |
| 002263 | 918.50 | 957.08 | 880.50 | 76.58 | 26.00 | 1991.00 | 199.10 |
| 002264 | 205.50 | 214.13 | 170.00 | 44.13 | 26.00 | 1147.41 | 114.74 |
| 002265 | 207.25 | 215.95 | 202.00 | 13.95 | 26.00 | 362.82 | 36.28 |
| 002266 | 602.50 | 627.81 | 576.75 | 51.05 | 26.00 | 1429.54 | 142.95 |
| 002267 | 432.00 | 450.14 | 417.25 | 32.89 | 26.00 | 921.03 | 92.10 |
| 002268 | 430.50 | 448.58 | 414.50 | 34.08 | 28.00 | 954.27 | 95.43 |
| 002269 | 436.50 | 454.83 | 414.25 | 40.58 | 28.00 | 1136.32 | 113.63 |
| 002270 | 435.00 | 453.27 | 423.50 | 29.77 | 28.00 | 833.56 | 83.35 |
| 002271 | 436.50 | 454.83 | 417.00 | 37.83 | 28.00 | 1059.32 | 105.93 |
| 002272 | 405.50 | 422.53 | 391.25 | 31.28 | 28.00 | 875.87 | 87.59 |
| 002273 | 404.25 | 421.23 | 391.25 | 29.98 | 28.00 | 839.40 | 83.94 |
| 002274 | 409.00 | 426.18 | 392.00 | 34.18 | 28.00 | 956.98 | 95.70 |
| 002275 | 413.25 | 430.61 | 395.75 | 34.86 | 28.00 | 975.98 | 97.60 |
| 002276 | 437.75 | 456.14 | 426.25 | 29.89 | 28.00 | 836.79 | 83.68 |
| 002277 | 295.00 | 307.39 | 281.75 | 25.64 | 28.00 | 717.92 | 71.79 |
| 002278 | 225.50 | 234.97 | 216.25 | 18.72 | 28.00 | 524.19 | 52.42 |



5.6 From the above it is quite evident that the demand has been made on the basis of the Trade Notice No 46/2002 dated 18.11.2002. The said trade notice is reproduced below-

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE: MUMBAI - IV
 CENTRAL EXCISE BUILDING, MAHARSHI KARVE ROAD,
 OPP. CHURCHGATE STATION, MUMBAI - 400 020.

11/11/02
 Exhibit

TRADE NOTICE NO.65/2002 DATED 30-09-2002.

Sub: Valuation of goods manufactured on job work basis by Independent Textile Processors - clarification - reg.

Attention of the trade is invited to this Commissionerate's Trade Notice No.31/2002 dated 24.3.2001, on the above subject.

2. The matter regarding valuation of goods manufactured on job work by textile processors has been examined by the Board. It may be noted that the earlier rule 5 (of Valuation Rules, 1975) spoke of inclusion of additional consideration received by the manufacture from the buyer, but did not mention as to what elements would comprise the additional consideration. In practice, it was taken to cover 'interest on deposits', 'delayed payment charges' etc. On the other hand, Rule 6 of the New Valuation Rules, 2002, specifically mentions some of the items like raw materials, moulds, dies, packing materials, etc. which would comprise additional consideration. As such, rule 6 of the New Valuation Rules is more appropriate for valuing goods manufactured on job work since in such cases the raw materials, moulds and even packaging materials are supplied free by the buyer.
3. Further, though Rule 8 of the New Valuation Rules is similar to the earlier Rule 6(b)(ii), there is a marked difference. The concept of valuing captively consumed goods on the basis of comparable goods [earlier Rule 6 (b) (i)] is no longer there. Plus, the determination of notionally fixed at 15% production cost for administrative convenience.
4. The Apex Court decisions in the case of Ujagar Prints and Pawan Biscuits clearly indicated that job work was to be valued by adding the processing charges (job work charges) to the landed cost of the raw materials. This is the basic principle, which remains unchanged. There was no specific rule relating to job-work under the old Valuation Rules and there is no specific rule in the new Valuation Rules, 2002, also. The earlier rule which closely approximated the system of valuation decided by the Apex Court was Rule 6(b)(ii) and the rule which closely approximates the same concept now is Rule 6. Once processing charges (job charges) are added to the raw material cost, the question of adding any further amount towards profit (of 15%) under Rule 8 does not arise as job charges always include the job worker's element of profit also. In other words, after 1.7.2000, in respect of goods manufactured on job work basis, valuation would be governed by Rule 11 of the New Valuation Rules, 2002 read with Rule 6 read with the above two decisions of the Apex Court.
5. As regards, determination of 'shrinkage factor' in respect of processed fabrics the same has to be taken into consideration as part of raw material cost and the actual quantification done as per prevailing practice/data. The cost of raw materials would include all costs incurred for bringing the raw materials to the premises of the job workers and this applies to all commodities. The shrinkage for man-made fabrics would be taken as the same as was being done earlier i.e.4%. Therefore, the shrinkage factor would be 1.042. Where the actual shrinkage is significantly higher than the average of 4%, the general practice was that the cost was worked out on the basis of actual shrinkage. This practice will continue. In cases where there is no shrinkage at all or there is elongation, the shrinkage factor need not be added. The element of shrinkage is relevant only in respect of the grey fabrics itself and has no bearing whatsoever on the processing charges, as such for loading purpose, the shrinkage factor should be added only to the landed cost of the grey fabrics and not to the processing charges.

For UNIVERSAL KNITTING MILLS PVT. LTD

Sudal Chaturvedi

DIRECTOR

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6. Accordingly, it is decided that in terms of the principles of valuation as laid down under the Act and Rules, the assessable value of fabrics, after being subjected to process by the job worker will be arrived at on the following basis: -

A = Landed Cost of grey fabrics in the hands of the processor (as per Rule 6 of the New Valuation Rules, 2000).

B = Processing Charge (including the profit of job worker if not already included in the job charges)

C = Shrinkage factor (as per prevailing practice / data)

Then the formula would be: -

Assessable value per metre of processed fabrics = $(A \times C) + B$

7. The following example illustrates the method of determination of assessable value of the processed fabrics in terms of the above formula: -

ILLUSTRATION

| | | |
|--|---|-------------------------|
| Landed Cost of grey fabrics | = | Rs.100/- |
| Processing charge for above grey fabrics | = | Rs.20/- |
| Therefore, assessable value of the processed fabrics | = | Rs.[(100 x 1.042) + 20] |
| | = | Rs.124.20p |

The landed cost of the grey fabrics should be as per Rule 6 of the New Valuation Rules, 2002.

8. This Commissionerate's Trade Notice No.31/2002 dated 24.3.2001 shall stand rescinded with effect from 19.02.2002. All pending assessments relating to valuation of goods manufactured on job-work basis shall be decided on the basis of the principles of valuation as laid down under the Board's Circular No.619/10/2002 - CX dated 19.02.2002 and in accordance with the instructions/guidelines contained herein.

- All the trade associations are requested to bring the contents of this trade notice to the attention of their member manufacturers in particular and trade in general

(AJIT KUMAR)
COMMISSIONER

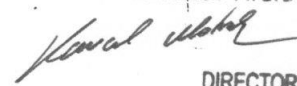
CENTRAL EXCISE, MUMBAI - IV

F. No. V-30(65)/T1/2001/M-IV
Mumbai, the September, 2002

Copy to: As usual

(Based on Board's Letter F. No. 6/47/2001 - CX1 dated 20th August, 2002 addressed to Chief Commissioner, C. Ex., Mumbai and Pune and Board's Circular No.619/10/2002 - CX dated 19.2.2002)

For UNIVERSAL KNITTING MILLS PVT. LTD



DIRECTOR

5.7 From the perusal of the said trade notice, specifically, the illustration in para 7, it is quite evident

that what is being clarified and determined there in is the assessable value of processed fabric. If that be so the assessable value, so determined should be multiplied by the quantity of processed fabric cleared to arrive at the total assessable value and duty determined thereon. From Annexure B, to the show cause notice, it is quite evident that duty has been not demanded by enhancing the assessable value of the processed fabric, but is demanded on the value of grey fabric by increasing the quantity of grey fabric. This is explained by taking the first row in the Annexure B-

| Calculation of Duty as per Show Cause Notice: | | |
|---|------------|----------|
| Lot No | a | 002216 |
| Grey Received (Mtrs) | b | 3011.00 |
| 4.2% of Grey Received added in Grey Received | c=b+.042Xb | 3137.46 |
| Processed Goods Delivered (Mtrs) | d | 2646.50 |
| Diff quantity | e= c-d | 490.96 |
| Grey Rate | f | 21.63 |
| Differential Value | g=eXf | 10717.70 |
| Differential Duty | h=0.1Xg | 1071.77 |

5.8 As per the trade notice 65/2002 the duty payable should have been determined in the following manner, taking processing charges as B and rate of duty as R:

Assessable Value of Processed Fabric = $f \times 1.042 + B$

Duty on processed fabric = $(f \times 1.042 + B) \times d \times R = (f \times 1.042 \times d + B \times d) \times R = \text{(Total Value of Grey Received + Total Processing Charges)} \times R$

5.9 In terms of Trade Notice No 46/2002 the only change in the scheme of 65/2002 has been modified to take into account the actual quantification of shrinkage factor as per prevailing practice/ data. Further what has been indicated in bold is exactly what has been prescribed by the trade notice dated 31/3/2003. There is no dispute about the fact that duty has been paid by the appellants after determining the assessable value as per trade notice of 31.03.2003. When the total quantum of the grey fabric received has been taken into account while determining the landed cost of grey fabric then the shrinkage factor is part of the total value, and there cannot be further addition to the same. This view is also the view expressed by the larger bench of Tribunal in case of Ramkumar Mills Pvt Ltd [205 (183) ELT 356 (T-LB)]

"8. The Tribunal in the case of Indian Rayon & Industries Ltd. C.C.E., Calcutta-IV (Supra) decided the issue in favour of the Revenue. After taking into consideration the decision of the Hon'ble Supreme Court in the case of Ujagar Prints v. Union of India and Ors. (Supra) the Tribunal held as under:

"I do not find any merit in the above contention since the observation of the Supreme Court as quoted above would make it clear that the selling price as declared by the trader would include only the price or deemed price at which the processed fabric would leave the factory plus his profit. Therefore, the price of the fabric at the point of its leaving the processor's factory is a relevant factory.

While computing the deemed price at the processor's factory gate the value of the grey clothes handed over to the processor has necessarily to be taken into consideration. This is clear from the illustration given in the reference order and which was again quoted in the clarificatory order of the Supreme Court. If wastage during the process has to be fixed at 5% it requires 100sq. metre of grey fabrics for removing 95 sq. metre of processed grey fabrics at the factory gate. Admittedly, this aspect has not been taken into consideration by the assessee while adopting the assessable value. On the other hand, it had derived at the assessable value by multiplying the price of processed grey fabrics per metre by the total quantity moving out of the factory after the process. Therefore, I agree with the view taken by the Member (Technical) that what is relevant for the purpose of duty is the intrinsic value of grey cloth plus the value of job work and manufacturing profits, expenses etc. The assessee will be entitled to abatement on the profit element, if any, of the raw material supplier included in the assessable value"

9. The appellants relied upon the decision of Gemini Dyeing & Printing Mills Ltd. v. CCE, Bangalore, reported in 1997 (91) E.L.T. 195 (Tribunal). In this case the decision of the Hon'ble Supreme Court in the case Ujagar Prints v. Union of India and Ors. is not taken into consideration. In these circumstances as the issue is already settled by the decision of the Hon'ble Supreme Court, therefore, view taken by the Tribunal in the case of Indian Rayon and Industries Ltd. v. CCE, Calcutta-IV (Supra) is approved and the decision taken by the Tribunal in the case of Gemini Dyeing & Printing Mills Ltd. v. CCE, Bangalore (Supra) is over-ruled."

5.10 In our view Commissioner (Appeal) and Adjudicating authority have fallen in error to the extent of addition of the "shrinkage factor" over and above the landed cost of grey fabric as received by the appellants.

6.1 The appeal filed by the Appellants is allowed.

(Pronounced in court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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