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

Appeal No. E/779/2011

(Arising out of Order-in-Appeal No. SB/33/Th-I/2011 dated 21.01.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I).

M/s Kumudshree Textile Mills Pvt. Ltd.	Appellant

Vs.

Commissioner of Central Excise, Thane-I	Respondent

Appearance:

Shri N.S. Patel, Advocate	for Appellant
Shri N.N. Prabhudesai, Supdt. (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 14.02.2019

Date of Decision: 14.02.2019

ORDER NO. **A/85305 / 2019**

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. SB/33/Th-I/2011 dated 21.01.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

2. Briefly stated the facts of the case are that the appellant during the period 16.12.1998 to February, 2000 short paid duty of Rs.17,23,476/- in terms of Section 3A of the Central Excise

Act, 1944 read with Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998 on the basis of final order passed by the Commissioner determining the annual production capacity. Consequently, a show-cause notice was issued for recovery of the said duty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal. .

3. Learned Advocate Shri N.S. Patel for the appellant submits that while determining the annual capacity of production in terms of Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998, the adjudicating authority has included the length of the gallery in the chambers, resulting into excess liability. He submits that the issue of inclusion of length of gallery in the Hot Air Stenter is no more *res integra* and covered by the judgment of Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Jaipur-II Vs. S.P.B.L. Ltd. – 2002 (146) ELT 254 (SC).*

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. We find that the short issue involved in the present appeal for consideration is whether the length of gallery be included in the Hot Air Stenter for determining the annual capacity of production under Section 3A of the Central Excise Act, 1944 for the period in dispute. We find that the Hon'ble Supreme Court in

S.B.P.L.'s case (supra) considering the said issue observed as follows: -

> ***9.*** *In view of this Trade Notice, the dispute has arisen and it has been contended that the galleries which are attached to the chambers on either side of the stenter cannot be included because its purpose is only limited. The Tribunal arrived at a conclusion that the Explanation to Rule 5 makes it clear that a float drying machine or any other equipments mentioned therein must be for aiding the process of heat setting or drying of fabrics. The Tribunal observed that a float drying machine is aiding the process of heat setting or drying of fabrics and other equipments contemplated by Explanation-I should also have like utility.*
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> ***10.*** *This part of the reasoning of the Tribunal cannot be said to be illegal or erroneous because the Explanation itself specifies that other equipment attached to a stenter should also be for aiding the process of heat setting or drying of the fabrics. The Tribunal found that a gallery, which is having no fan or radiator attached to it, cannot come within the purview of interpretation as contemplated by Explanation-I. Further, on the basis of the aforesaid amended Rules, the Tribunal negatived the contention raised by the Department that while counting number of chambers in each of the hot-air stenters, the galleries attached to it would be deemed to be one chamber of a stenter. Amended Rules clarify and remove the ambiguity particularly which arose because of the Trade Notice.*

6. Following the aforesaid judgment of Hon'ble Supreme Court, we do not find merit in the impugned order. Accordingly, the same is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order pronounced in Court)

(P. Anjani Kumar)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha