

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

**APPLICATION Nos. E/Misc/86590,85494/2018
APPEAL No. E/960/2010**

(Arising out of Order-in-Appeal No. P-I/VSK/38/2010 dated 24.02.2010 passed by Commissioner of Central Excise (Appeals), Pune-I)

Allover & Lace Pvt. Ltd.

Appellant

Vs.

Commissioner of Central Excise, Pune-I

Respondent

Appearance:

Shri J.C. Patel, Advocate, for appellant

Shri Sanjay Hasija, Superintendent (AR), for respondent

CORAM:

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

Hon'ble Mr. P. Anjani Kumar, Member (Technical)

Date of Hearing: 01.11.2018

Date of Decision: 01.11.2018

ORDER NO. **A / 88410 / 2018**

Per: S.K. Mohanty

The applicant has filed the miscellaneous applications, seeking for extension of stay granted vide order dated 20.6.2011 by the Tribunal. Since the main appeal has already been listed for hearing today, the miscellaneous applications filed by the applicant are infructuous and accordingly dismissed.

2. This appeal is directed against the impugned order dated 24.02.2010 passed by the Commissioner of Central Excise (Appeals), Pune.

3. Brief facts of the case are that the appellant was engaged in the activity of undertaking embroidery on cotton and manmade fabrics, which is categorized as excisable goods and classified under sub-heading 5805.19 of the Central Excise Tariff Act, 1985. During the period 01.04.2003 to 07.07.2004, the appellant carried out embroidery on job work basis, on the fabrics received from the customers and discharged duty liability on the value arrived at by taking the processing charges and value of cloth received from the customers. During the course of verification of records maintained by the appellant, it was noticed by the department that the appellant had embroidery machines of length 13.88 metres, which also holds 0.62 metres of cloth in the machine itself. Thus, the department contended that the total length of each embroidery should be 14.50 metres. Since the appellant had not included the value of 0.62 metres of unembroided cloth in the assessable value, it was concluded that the appellant had short paid central excise duty to the tune of Rs.1,10,641/-. Further, it was also contended by the department that while effecting clearances of embroidered cloth, in some

cases, the appellant had not included the value of cloth received from the customers and only discharged the duty liability on the processing charges claimed from the customers. Accordingly, the department concluded that the appellant had short paid duty amounting to Rs.5,81,187/- by resorting to undervaluation. Accordingly, show cause notice dated 26.03.2008 was issued by the Department, seeking for confirmation of the above duty demand on the appellant. The matter was adjudicated vide order dated 20.07.2009, wherein the adjudicating authority had confirmed duty demand of Rs.6,91,828/- and also imposed equal amount of penalty on the appellant. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 24.02.2010 has upheld the adjudication order and rejected the appeal filed by the appellant.

4. Learned Advocate appearing for the appellant submitted that there were divergent views by the Tribunal regarding consideration of actual length of cloth for the purpose of valuation. In this context, he has relied upon the decision of this Tribunal in the case of *Gemini Dyeing & Printing Mills Ltd. vs. CCE, Bangalore – 1997 (91) ELT 195 (Tribunal)* and also the Larger Bench decision in the case of *Ramkumar Mills Pvt. Ltd. vs. CCE, Bangalore – 2005 (183) ELT 356 (Tri.-LB)*. The

learned Advocate submitted that since the matter was resolved by the Larger Bench of the Tribunal, extended period of limitation cannot be invoked for confirmation of the adjudged demand. With regard to the duty demand of Rs.5,81,187/-, the learned Advocate submitted that the show cause notice had not provided any evidence that the value of cloth taken for consideration was less than the actual value on which duty liability was discharged by the appellant. Thus, the learned Advocate submitted that based on mere audit objection, without citing any evidence in support of allegation of undervaluation, the adjudged demand cannot be sustained on the ground of limitation. In this context, he has relied upon the decision of this Tribunal in the case of *Ram Steel Rolling & Forging Mills vs. CCE, Mumbai-II – 2006 (204) ELT 87 (Tri.-Mumbai)*.

5. On the other hand, the learned AR appearing for Revenue reiterated the findings recorded in the impugned order.

6. Heard both sides and perused the records.

7. We find that the central excise duty demand of Rs.1,10,641/- was confirmed on the appellant on the ground that it had only taken the value of length of the processed cloth i.e. embroidered cloth of 13.88 metres

and did not consider the value of end pieces of cloth (additional 0.62 metres), which was required to hold the fabric in the embroidery machine. In this context, the Tribunal in the case of *Gemini Dyeing & Printing Mills Ltd.* (supra) has held that the length of processed cloth has to be taken for valuation purpose and the wastage/shrinkage has to be excluded. On a reference to the Larger Bench, the issue was finally settled in the case of *Ramkumar Mills Pvt. Ltd. vs. CCE, Bangalore* (supra). The law is well settled that when there were conflicting views which necessitated reference to Larger Bench, the extended period of limitation cannot be invoked. In the present case, since the adjudged demand confirmed pertains to the period from 01.04.2003 to 07.07.2004 and the show cause notice was issued on 26.03.2008, the said notice, in our considered view, is barred by limitation of time, having been issued beyond the normal period prescribed under Section 11A of the Central Excise Act, 1944.

8. With regard to demand of duty of Rs.5,81,187/- on the ground that the appellant had undervalued the cloth in some cases and not taken the value of cloth in some other cases, we find that no such bifurcation or evidence had been provided in the show cause notice to substantiate that the value of cloth taken was less than

the actual value considered for the purpose of valuation of duty liability. Since the said demand was confirmed solely based on the audit objection and no supporting evidences were produced by the department, alleging undervaluation of the cloth, we are also of the view that extended period of limitation cannot be sustained for confirmation of the adjudged demand.

9. In view of above, the impugned order is set aside and the appeal filed by the appellant is allowed only on the ground of limitation.

(Pronounced in court)

(P. Anjani Kumar)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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