

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

Excise Appeal No: 311 of 2008

[Arising out of Order-in-Original No: 15/CEX/2007 dated 11th January 2008 of by
Commissioner of Central Excise, Pune – II.]

Unirose Textile Processors (P) Ltd
40-41, Shri Laxmi Saha Audyogik Vasahat Ltd
Hatkanangale, Dist: Kolhapur

... Appellant

versus

Commissioner of Central Excise
Pune – II
41/A 4th Floor, ICE House, Sasoon Road, Pune – 411 001

...Respondent

WITH

Excise Appeal No: 312 of 2008

[Arising out of Order-in-Original No: 15/CEX/2007 dated 11th January 2008 of by
Commissioner of Central Excise, Pune – II.]

Shahajan G Shirgave, Director
Unirose Textile Processors (P) Ltd
40-41, Shri Laxmi Saha Audyogik Vasahat Ltd
Hatkanangale, Dist: Kolhapur

... Appellant

versus

Commissioner of Central Excise
Pune – II
41/A 4th Floor, ICE House, Sasoon Road, Pune – 411 001

...Respondent

AND

Excise Appeal No: 313 of 2008

[Arising out of Order-in-Original No: 15/CEX/2007 dated 11th January 2008 of by
Commissioner of Central Excise, Pune – II.]

Shakil G Shirgave, Director
 Unirose Textile Processors (P) Ltd
 40-41, Shri Laxmi Saha Audyogik Vasahat Ltd
 Hatkanangale, Dist: Kolhapur

... *Appellant*

versus

Commissioner of Central Excise
 Pune – II
 41/A 4th Floor, ICE House, Sasoon Road, Pune – 411 001

... *Respondent*

APPEARANCE:

Shri VS Sejpal with Shri VB Gaikwad, Advocates for the appellants

Shri Ajay Kumar, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/88559-88561 / 2018

DATE OF HEARING:	28/12/2018
DATE OF DECISION:	28/12/2018

PER: C J MATHEW

This matter is before us for the second time. On the previous occasion, the Tribunal had, *vide* order no. A/ 493-496/WZB/06/CI/EB dated 9th March 2006, accepted the plea of M/s Unirose Textile Processors (P) Ltd that they be provided with certain documents and that cross-examination of certain individuals should also be permitted. Admittedly, while the direction pertaining to documents are said to have been implemented, the cross-examination, for one reason or the

other, was not complied with. The adjudicating authority has noted that the counsel appearing for the noticee had declined to carry out the cross-examination.

2. The case of the central excise authorities is that the appellant had clandestinely cleared 'man-made fabrics/other fabrics' and based on 202 octroi free-pass obtained from the contractor, M/s Trimurti Commercial Corporation, the evasion was quantified. It was the claim of the noticee before the adjudicating authority that, of the 202 passes, 61 were only applications and that none of the passes themselves bore the name of the appellant herein. It was also alleged that bulk of traders involved in the purported transactions were not examined during the course of investigation.

3. It would appear that, owing to the peculiarity of geographical distribution of the processors in the municipal limit of Ichalkaranji municipality, a special procedure had been devised by the local body for allowing the traders to move 'grey fabrics' to the premises of the processors outside the municipal jurisdiction by issue of special passes. These passes enable free movement of grey fabrics and with liability to discharge octroi only in the event of non-return of the processed fabrics within three months of their dispatch. That no trader had to comply with this contingency of default and that six out of eleven processors were not in existence, led to proceedings against the appellant herein.

The demand appears to have been finalized on the basis of those prescriptions backed by statements recorded during the investigation.

4. As the proceedings arise out of a remand order, we are obliged to ensure that the directions of the Tribunal had been complied with. It would also appear that the entire case having been built on records that were recovered from the possession of persons other than the appellant and the allegations pertain to clandestine production and removal, the veracity of the documents as well as corroboration by those who were examined during the investigation is essential for determination of the outcome of the appeal. It is pointed out by Learned Counsel that in the said passes/applications, eleven vehicles had been identified but that only six of them were investigated and that the absence of any documentation with the transporters would affect the credibility of the statements recorded. The flaw of selective acceptance of the contents of the octroi-free passes for quality without granting credence to the rest of the details therein was also highlight. It is also alleged that out of the statements of six traders which were against them many that were retracted and the statements given by the traders denying any connection with the appellant had been suppressed rendering the findings of the adjudicating authority not sustainable. Learned Authorised Representative argues that adequate opportunity had been afforded to comply with the direction of the Tribunal.

5. Though the adjudicating authority has recorded of lack of diligence on the part of the appellant herein in taking advantage of the opportunity for cross-examination, it is amply clear that the directions of the Tribunal have not been complied with. It would, therefore, be improper on our part to evaluate the findings of an adjudicating authority which has failed to implement the orders of the Tribunal in the light of the deficiencies pointed out by Learned Counsel. In these circumstances, there is no option but to set aside the impugned order and remand the matter back to the original authority for a fresh determination after completion of the cross-examination of the persons whose statements had been recorded.

6. The appeals are accordingly disposed off.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)