CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 376 of 2009

[Arising out of Order-in-Original No: 25/2008/C dated 31st December 2008 passed by the Commissioner of Central Excise and Customs, Nagpur.]

Supreme Quality Textiles Processors Pvt Ltd
60 Saraswati layout, Deendayal Nagar, Nagpur - 440022 … ***Appellant***

versus

Commissioner of Central Excise & Customs ***…Respondent***
Telengkhedi Road, Civil Lines, Nagpur - 440001

APPEARANCE:

Shri AM Chitnis, Consultant for the appellant

Shri AB Kulgod, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/ 87429 / 2019

DATE OF HEARING: 10/01/2019
DATE OF DECISION: 10/01/2019

PER: C J MATHEW

This appeal of M/s Supreme Quality Textile Processors Pvt Ltd against order-in-original no. 25/2008/C dated 31st December 2008 of Commissioner of Central Excise and Customs, Nagpur in which demand of ₹ 3,36,838 has been confirmed under rule 9(2) of Central

Excise Rules, 1944 read with section 11A of Central Excise Act, 1944, along with imposition of penalty of ₹ 75,000 under rule 173Q of Central Excise Rules, 1944 has a hoary past.

2. Learned Consultant informs us that this dispute, before the Tribunal for the third time, commenced with notice issued on 7th February 1995 alleging that the appellant, claiming to be outside the scope of coverage under Central Excise Act, 1944 as a processor undertaking printing and stentering of 'terry towel fabric' without aid of power for M/s Yale Intex, was indeed, by reason of

> *'In relation to products of Sub Heading No. 5802.12 bleaching, dyeing, printing or any other process or any 2 or more of these processes shall amount to manufacture'*

being note 7 in chapter 58 of the First Schedule to Central Excise Tariff Act, 1985, a manufacturer liable to duties of central excise. It is seen from the records that, owing to there being no sale from the premises of the principal manufacturer, the assessable value was arrived at using the costing adopted by the principal manufacturer after abatement of cost of stitching, cutting and packing (taken at 10%) to which the job charges were added.

3. On the first occasion, the adjudicating authority dropped proceedings and, on appeal of Revenue, the matter was remanded back with the direction that it be adjudicated a fresh along with that of the principal manufacturer. In the further proceedings, the demand was

confirmed and penalty of ₹ 75000 under rule 173Q of Central Excise Rules, 1944 imposed but the appeal thereon, dismissed for non-compliance with the order of pre-deposit, was restored after appeal to the Hon'ble High Court was again remanded back by the Tribunal to enable consideration of the evidence of export, or clearance on payment of duty, by the principal manufacturer.

4. The adjudicating authority, placing reliance on the decision of the Hon'ble Supreme Court, in *Collector of Central Excise v. Rajasthan State Chemical Works [1991 (55) ELT 444 (SC)]*, holding that

> *'we are therefore, of the view that if any operation in the course of manufacture is so integrally connected with the further operation which result in the emergence of manufactured goods and such operation is carried on with the aid of power, the process in Orange relation to the manufacture must be deemed to be one carried on with the aid of power. In this view of the matter, we are unable to accept the contention that since the pumping of the brine into the salt pans or the lifting of coke and limestone with the aid of power does not bring about any change in the raw material, the case is not taken out of the notification.'*

and of the Tribunal in *Commissioner of Central Excise, Mumbai-V v. Dhanesh Textile Ind Pvt Ltd [2008 (227) ELT 594 (Tri-Mum)]* on similar lines, held that the note *supra* applied to the use of power for printing and stentering by the appellant herein. It was also noticed that, despite specific directions of the Tribunal on plea made by the appellant, the details sought were never furnished. It is also submitted that the claim for coverage under rule 96D of Central Excise Rules, 1944 enabling removal of cotton fabrics from one factory to another without payment of duty was also denied as the procedural requirements, held by the adjudicating authority to be substantive, had not been complied with.

5. Another contention placed before the adjudicating authority was that the direction of the Tribunal, on the first occasion, to dispose off the dispute in conjunction with that of M/s Yale Intex had not been complied with during the second round of adjudication but was claimed to have been discarded owing to impossibility of compliance and for not having agitated that as a grievance before the Tribunal on the second occasion.

6. Learned Consultant has placed before us the decision of the Tribunal in *Yale Intex v. Commissioner of Central Excise, Nagpur [2005 (186) ELT 67 (Tri-Mumbai)]* to establish that the appellant therein either been exporting the goods or clandestinely removing them without payment of duty on which recoveries were effected. Drawing attention to the decision of the Tribunal in *Commissioner of Customs & Central Excise, Pune v. Swastik Dyeing & Bleaching Factory [2004 (170) ELT 491 (Tri-Mumbai)],* it was contended that the finding therein of ‘stentering’ of ‘cotton fabric’ being limited to drying would eliminate the scope for invoking the note in chapter 58 relied upon by the adjudicating authority.

7. We have heard Learned Author Representative.

8. We find that the appellant, if undertaking the two processes without aid of power, would not be liable to duties of excise as a manufacturer. It is not in dispute that the appellant works on running the length of fabric which is printed and stenterized. It would appear from the findings that the allegation of use of power has been upheld solely because light is used for inspection of the printed fabric. That, in our opinion, is not the intent of the said note in chapter which must be inextricably connected with the process. It has been held in *re Swastik Dyeing & Bleaching Factory* that, insofar as cotton fabric is concerned, stentering involves mere drying; there is no evidence that any power source is utilised for such drying.

9. In the above circumstances, we find that the impugned order has erred in holding that the appellant resorted to use of power for one or more of the activities. Therefore, we set aside the demand and penalty to allow the appeal.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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