

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH AT MUMBAI**

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 560 of 2011

(Arising out of Order-in-Original No. 06-07/ANS/2010-11 dated 22.12.2010 passed by Commissioner of Central Excise, Mumbai-III)

M/s Just Textiles Ltd.

.....Appellant

Devi Dayal Compound,
Kanjurmarg (East),
Mumbai-400042

VERSUS

**Commissioner of Central Excise,
Mumbai-III**

.....Respondent

3rd & 4th Floor, Vardaan Centre,
MIDC, Wagle Industrial Estate,
Thane (West), Mumbai-400604

Appearance:

Shri Prakash Shah, Advocate for the Appellant

Shri A.B. Kulgod, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/88572 / 2018

Date of Hearing: 13.12.2018

Date of Decision: 13.12.2018

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 22.12.2010 passed by the Commissioner of Central Excise, Mumbai-III, wherein abatement claimed by the appellant was disallowed and demand of Rs.98,77,139/- was confirmed along with interest and equal amount of penalty was imposed on the appellant.

2. Brief facts of the case are that during the disputed period, the appellant was engaged in manufacture and processing of textiles through the hot air stenters installed in factory premises.

The appellant was registered with the central excise department for processing textiles fabrics, falling under Chapter Nos. 52, 54, 55 and 59 of the Central Excise Tariff Act, 1985. The appellant was governed under the erstwhile compounded levy scheme contained in Section 3A of the Central Excise Act, 1944 read with Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1988 and Rule 96 ZQ of the Central Excise Rules, 1944. For the month of November, 1999, the appellant had operated the stenter viz. 'DHALENT' from 01.11.1999 to 05.11.1999 and closed the same from 06.11.1999 onwards. The others stenter viz. 'HARISHTEX' was also closed from 01.12.1999 to 28.12.1999. The appellant did not pay the central excise duty liability fixed on the basis of annual capacity of production. However, the department objected to such non-payment of duty amount on the ground that the appellant should have paid the duty for the month, notwithstanding the fact that the stenter was closed from 06.11.1999 onwards and then claimed abatement as provided under Rule 96ZQ(7) of the erstwhile Rules, 1944. Accordingly, the department issued show cause notices dated 30.11.2000 and 03.01.2001, proposing for recovery of the amount in respect of the stenters not in operation during the closer period. The said show cause notices were adjudicated vide the above impugned order.

3. The learned Advocate appearing for the appellant submitted that both the stenters were closed following the prescribed procedures for the period 06.11.1999 to 27.06.2000 and the same were sealed and de-sealed by the proper officer. He also submitted that the appellant had applied for abatement on 28.08.2000 and revised the said application on 15.11.2000 for the period of closer. Further, the learned Advocate also submitted that the impugned order has raised completely new ground for confirmation of the adjudged demand, which was not the subject matter of dispute urged in the show cause notices. Thus, he submitted that the impugned order cannot be sustained. The learned Advocate has relied upon the decision of

this Tribunal in the case of Commissioner of C. Ex. & Cus., Surat-I v/s. Shabnam Processors Pvt. Ltd. [2009 (236) ELT 533 (Tri.-Ahmd.)] and Kashish Silk Mills Pvt. Ltd. v/s. Commissioner of C. Ex., Surat-I [2008 (231) E.L.T. 185 (Tri. – Ahmd.)] to state that confirmation of the adjudged demand will not stand for judicial scrutiny. The learned Advocate also submitted that the demand confirmed based on the capacity determined by the department under Rule 3 of the Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1988 read with Section 3A *ibid*, as published vide Notification No. 42/98-C.E. (N.T.) dated 10.12.1990 has been declared ultra vires by the Hon'ble Madras High Court in the case of Beauty Dyers Vs. Union of India-2004 (166) ELT 27 (Mad.) and thus, the impugned order is liable to be set aside on this ground alone.

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

5. Heard both sides and perused the records.

6. We find that the show cause notice dated 30.11.2000 was issued, proposing recovery of an amount of Rs.8,33,333/- for the month of November, 1999 on the ground that the appellant did not deposit the duty before claiming abatement. The other show cause notice dated 03.01.2001 was issued for recovery of the amount of Rs.90,43,806/- for the period from 01.12.1999 to 27.06.2000 on the ground that the appellant had contravened the provisions of Rule 96ZQ(7) *ibid* by not claiming abatement. However, the learned Adjudicating Authority has confirmed the proposed demands on the ground that the appellant did not follow the procedure of trade notice dated 11.06.1999; non-production of independent certificate to the effect that the appellant has not cleared non-stentered fabrics during the period of closer; the appellant failed to produce the documents for verification and that the register of sealing /de-sealing was not authenticated by the central excise officer. It is evident that the

impugned order has travelled beyond the scope of the show cause notice inasmuch as the said order has considered entirely new grounds, which were not urged in the show cause notices. We also find that both the stenters were closed by the appellant by following the laid down procedures and the same were sealed and de-sealed by the proper officer. Thus, under such circumstances, it cannot be said that the appellant did not follow or observe the procedures laid down in the statute. The procedure prescribed for sealing was to ensure against any wrong and false claim made by the assessee. Hence, we are of the considered view that the adjudged amount confirmed on the appellant cannot be sustained.

7. It is observed that considering the Notification No. 42/1998 (supra) and the rules framed there under, the Hon'ble Madras High Court in the case of Beauty Dyers (supra) have held that Rule 3 contained in the said Notification cannot be sustained, as the same ultra vires Section 3A of the Act. Thus, on this ground also there is no reason to sustain confirmation of the adjudged demands on the appellant.

8. In view of above, we do not find any merits in the impugned order and accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

(Operative part of the order pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)