

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

REGIONAL BENCH - COURT NO. I

Customs Miscellaneous Application (COD) No. 86421 of 2019
Customs Cross Objection No. 86420 of 2019
(On behalf of Respondent)

In

Customs Appeal No. 88586 of 2013

(Arising out of Order-in-Appeal No. 141 to 151/BPS/MUM/2013 dated 25.04.2013 passed by the Commissioner of Central Excise (Appeals-IV), Mumbai-I)

Commissioner of Central Excise, Thane-II Appellant
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai - 400028

Versus

M/s Lavino Kapur Cotton Pvt. Ltd. Respondent
Plot No. H-1, MIDC Tarapur Boisar, Thane - 401404

WITH

Customs Miscellaneous Application (COD) No. 86423 of 2019
Customs Cross Objection No. 86422 of 2019
(On behalf of Respondent)

In

Customs Appeal No. 88590 of 2013

(Arising out of Order-in-Appeal No. 141 to 151/BPS/MUM/2013 dated 25.04.2013 passed by the Commissioner of Central Excise (Appeals-IV), Mumbai-I)

Commissioner of Central Excise, Thane-II Appellant
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai - 400028

Versus

M/s Lavino Kapur Cotton Pvt. Ltd. Respondent
Plot No. H-1, MIDC Tarapur Boisar, Thane - 401404

AND

Customs Appeals No. 88592 to 86597 of 2013

(Arising out of Order-in-Appeal No. 141 to 151/BPS/MUM/2013 dated 25.04.2013 passed by the Commissioner of Central Excise (Appeals-IV), Mumbai-I)

Commissioner of Central Excise, Thane-II Appellant

3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai - 400028

Versus

M/s Lavino Kapur Cotton Pvt. Ltd. Respondent

Plot No. H-1, MIDC Tarapur Boisar, Thane – 401404

AND

Customs Appeals No. 88598 and 86599 of 2013

(Arising out of Order-in-Appeal No. 141 to 151/BPS/MUM/2013 dated 25.04.2013 passed by the Commissioner of Central Excise (Appeals-IV), Mumbai-I)

Commissioner of Central Excise, Thane-II Appellant

3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai - 400028

Versus

M/s Lavino Kapur Cotton Pvt. Ltd. Respondent

Plot No. H-1, MIDC Tarapur Boisar, Thane – 401404

AND

Customs Miscellaneous Application (COD) No. 86419 of 2019**Customs Cross Objection No. 86418 of 2019**

(On behalf of Respondent)

In

Customs Appeal No. 88603 of 2013

(Arising out of Order-in-Appeal No. 141 to 151/BPS/MUM/2013 dated 25.04.2013 passed by the Commissioner of Central Excise (Appeals-IV), Mumbai-I)

Commissioner of Central Excise, Thane-II Appellant

3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai - 400028

Versus

M/s Lavino Kapur Cotton Pvt. Ltd. Respondent

Plot No. H-1, MIDC Tarapur Boisar, Thane – 401404

Appearance:

Shri K.K. Srivastava, ADC, Auth. Representative for the Appellants

Shri Surinder Mehra, C.A. for the Respondents

CORAM:

HON'BLE MR. S.S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85697-85707 / 2020

Date of Hearing: 04.03.2020

Date of Decision: 25 .08.2020

Per: S.S. Garg

The Revenue has filed 11 appeals against a common impugned Order-in-Appeal No. 141 to 151/BPS/MUM/2013 dated 25.04.2013 passed by the Commissioner of Central Excise (Appeals-IV), Mumbai-I, whereby the Commissioner (Appeals) has allowed the appeals of the respondents by setting aside the Orders-in-Original passed by the lower authority. The details of the said 11 appeals are as under:-

Sr. No.	Appeal No.	Duty involved	Penalty involved	Order-in-Original No. & Date
1	C/88586/13	1,80,607	1,80,607	24/2006-07 dated 20.08.2007
2	C/88590/13	4,89,432	4,89,432	25/2006-07 dated 20.08.2007
3	C/88592/13	3,78,410	3,78,410	26/2006-07 dated 20.08.2007
4	C/88593/13	4,52,921	4,52,921	27/2006-07 dated 20.08.2007
5	C/88594/13	2,96,352	2,96,352	28/2006-07 dated 20.08.2007
6	C/88595/13	4,72,166	4,72,166	23/2006-07 dated 20.08.2007
7	C/88596/13	4,71,247	4,71,247	36/2007-08 dated 31.12.2007
8	C/88597/13	2,03,838	2,03,838	35/2006-07 dated 31.12.2007
9	C/88598/13	1,41,00,178	0	KS/19/10-11 dated 31.03.2011
10	C/88599/13	11,60,914	0	KS/20/10-11 dated 31.03.2011
11	C/88603/13	28,56,719	1,00,000	VK/36/11-12 dated 31.03.2012

Since the issue involved in all these appeals is identical, therefore, all the appeals are being taken up together for

discussion and disposal. For the sake of convenience, the facts of the case of Appeal No. C/88586/2013 are being recorded.

2. Briefly stated the facts of the present case are that the respondent is 100% EOU engaged in the manufacture of finished goods viz. Absorbent Cotton (hereinafter referred to as the 'said goods') falling under sub-heading No. 56012110 of the first Schedule to the Central Excise Tariff Act, 1985. The assessee had imported 100% Cotton Comber Noil falling under Chapter 52.02 of the Customs Tariff Act, 1975 without payment of customs duty in terms of Notification No. 52/2003-Cus dated 31.3.2003 as amended, against Procurement Certificate issued to them. The same was used in the manufacture of their finished goods viz. Absorbent Cotton. The allegation of the Department is that the assessee has violated the conditions/provisions of Notification No. 52/2003-cus dated 31.3.2003, conditions mentioned in their Letter of Permission (LOP) and the undertaking given by them in their B-17 Bond by not paying customs duty leviable under Section 12 of the Customs Act, 1962, on 100% cotton comber Noil gone into the cotton waste generated during the course of manufacture of Absorbent cotton and subsequently cleared. On these allegations, periodical show-cause notices were issued to the assessee from time to time and after following the due process, the original authority confirmed the demand. Aggrieved by the said order, the assessee filed appeals before the Commissioner (Appeals), who allowed the appeal and set aside the order passed by the original authority. Hence, the present appeals.

3. Learned AR for the Revenue submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the customs duty amount of Rs.1,80,607/- demanded for the period February, 2006 which has been dropped along with the total duty demand of Rs.2,11,99,007/- for the subsequent period, is recoverable from the assessee for the non-compliance of post-importation conditions under Notification No. 53/2003-Cus dated 31.3.2003 and by invoking the conditions mentioned in B-17 Bond executed by them under the provisions of Central Excise and Customs Laws. He further submitted that the assessee had violated the conditions/provisions of the Notification No. 52/2003-Cus dated 31.3.2003, conditions mentioned in their LOP and the undertaking given by them in their B-17 Bond by not paying the Customs duty leviable under Section 12 of the Customs Act, 1962, on 100% Cotton Comber Noil gone into the Cotton waste generated during the course of manufacture of Absorbent Cotton and subsequently cleared. He further submitted that the assessee had willfully contravened the provisions of Notification No. 6/98-CE (NT) dated 02.03.1998 and CBIC Circular No. 14/98-Cus dated 10.03.1998. He further submitted that clause (a) of the opening para read with the condition 3(c) and first proviso of para 3 of Notification No. 52/2003-Cus dated 31.03.2003 and condition mentioned in their LOP were contravened with an intent to evade payment of duty. The

learned AR took us through the various clause of Notification No. 52/2003-Cus dated 31.03.2003.

4. On the other hand, learned C.A. for the assessee defended the impugned order and submitted that the Commissioner (Appeals) has allowed the appeal of the assessee relying upon the ratio of the CESTAT's decision in the case of *Synergies-Dooray Automotive Ltd. Vs. Commissioner of Central Excise, Visakhapatnam-I – 2008-TIOL-682-CESTAT-Bang*, which is fully applicable to the facts of the present case. He further submitted that the Department challenged the decision of *Synergies-Dooray Automotive Ltd. (supra)* before the Hon'ble High Court of Andhra Pradesh and the said appeal has been withdrawn from the Hon'ble High Court. Learned C.A. further relied upon the following decisions: -

- (a) *Collector of Central Excise, Hyderabad Vs. Vazir Sultan tobacco Co. Ltd. – 1996 SCC (3) 434.*
- (b) *Wallace Flour Mills Co. Ltd. Vs. Collector of Central Excise – 1989 SCC (4) 592*
- (c) *C.T. Cotton Yarn Ltd. Vs. CCE, Indore In appeal No. E/1715-1716/1997 vide Order dated 25.06.2012*
- (d) *Technocraft Industries Pvt. Ltd. Vs. CCE, Thane-I in Customs Appeal No. 120 of 2011 vide Order dated 13.08.2019.*
- (e) *Indian Aluminium Co. Ltd. Vs. A.K. Bandyopadhyay & Others – 1980 (6) ELT 146 (Bom)*
- (f) *Nizam Sugar Factory Vs. Commissioner of Central Excise, A.P. – 2006 (11) SCC 573.*

5. Learned C.A. further submitted that the Department has levied the excise duty and the customs duty on the same transaction of DTA clearances of cotton waste for the period from

1.4.2001 to 31.3.2011. He also submitted that the double levy of excise duty and the customs duty on the same transaction is not permissible in law. He also submitted that the assessee has filed appeal against the levy of excise duty and the said Appeal No. E/85917/2019 is already pending before this Tribunal.

6. Heard both sides and perused the records.

7. After considering the submissions of both the parties and perusal of the materials on record and various decisions relied upon by the parties, we find that in the present set of 11 appeals, 8 appeals from Sr. No. 1 to 8 of the table mentioned in para 1 of this order, can be dismissed under the Litigation Policy as per Circular No. F. No. 390/Misc/163/2010-JC, dated 17.12.2015, which prescribes the monetary limit of Rs.10 lakhs. In view of the Customs Notification cited above, first 8 Appeals in the table cited above are dismissed under the Litigation Policy without going into the merit of the case.

8. Further, we note that after completion of the hearing, learned AR for the Revenue brought to our notice that the issue which is involved in the present case has been referred to the larger Bench in appeal No. C/85110/2013. He further prayed that the present appeals should be adjourned awaiting the decision of the Larger Bench in appeal No. C/85110/2013 in the case of Eurotex Industries & Exports Ltd. Vs. Commissioner of Central Excise, Kolhapur. Since the issue involved in the present case has already been referred to the larger bench, therefore,

we order that three appeals from Sr. No. 9 to 11 mentioned in table cited above are adjourned and should be listed after the decision of the larger Bench.

9. In the result, 8 appeals namely, Appeal No. C/88586, 88590 and 88592 to 88597/2013 are dismissed under the Litigation Policy dated 17.12.2015 and 3 appeals namely, Appeal No. C/88598, 88599 & 88603/2013 are adjourned and to be listed after the decision of the larger Bench.

(Pronounced in court on 25.08.2020)

(S.S. Garg)
Member (Judicial)

(Raju)
Member (Technical)

Sinha