CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 1544 of 2011

[Arising out of Order-in-Appeal No: Th-I/RKS/04/2011 dated 30th August 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai – I.]

Dhairya Polytex Limited
Sainath Industrial Complex, Gala No. C-32 & C-1704/1
Khoni Village, Bhiwandi - 421302 … ***Appellant***

versus

Commissioner of Central Excise
Thane – I
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai - 400028 ***…Respondent***

APPEARANCE:

Ms Kiran Doiphode, Advocate for the appellant

Shri Anil Choudhary, Deputy 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/87565 / 2019

DATE OF HEARING:	12/04/2019
DATE OF DECISION:	12/04/2019

PER: C J MATHEW

This appeal of M/s Dhairya Polytex Ltd, against order-in-appeal no. Th-I/RKS/04/2011 dated 30th August 2011 of Commissioner of

Central Excise (Appeals), Mumbai–I, pertains to the alleged clandestine clearance of 15482.90 kgs of 'dyed yarn' with consequent duty liability of ₹ 4,98,107 proposed for recovery in show cause notice dated 24th February 2005. The original authority limited the confirmed recovery to ₹ 40,569, along with interest thereon, besides imposing penalty of like amount on the assessee under section 11AC of Central Excise Act, 1944 and on individuals. It would appear that, aggrieved by the extending of benefit of notification no. 6/2002-CE dated 1st March 2002 leading to the restricted confirmation, the competent authority directed that the matter be carried before the first appellate authority who enhanced the demand and detriment.

2. We have heard Learned Counsel for appellant and Learned Authorized Representative at length. It was pointed out that the conditions in the exemption notification prescribe ascertainment of the input materials having suffered duty and that credit has not been availed on them. It would appear that the notification, permitted to be availed by the original authority, was disallowed by the first appellate authority solely because the appellant herein had failed to provide evidence that the manufacture had been out of duty paid material.

3. It is further submitted that the first appellate authority had failed to appreciate the relevance of the decision of the Hon'ble Supreme Court in *Collector of Central Excise v. Decent Dyeing Co [1990(45)*

ELT 201 (SC)] in the attempt to distinguish the facts relied upon by the assessee. We observe that, against the claim of duty having been discharge, satisfaction of tax authorities requires verification by jurisdictional officers. In the light of the assertion on the part of the assessee of the proper course to be pursued, the categorical disinclination to carry out such exercise is not an acceptable response.

4. Accordingly, we set aside the impugned order and remand the matter back to first appellate authority before whom the appellant shall substantiate its claim of having utilized duty paid goods in the manufacture of the goods cleared by them.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*