CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 538 OF 2011

[Arising out of Order-in-Appeal No: SB/288 & 289/Th-I/2010 dated 29th December 2010 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Shree Shankar Silk Mills Ltd
164/1 Kamatghar, Narpoli
Bhiwandi, Dist: Thane – 421 302 … ***Appellant***

versus

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

APPEARANCE:

Shri Sachin Chitnis, Advocate for the appellant

Shri Anil Choudhary, Deputy 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/85909 / 2020

DATE OF HEARING: 27/01/2020
DATE OF DECISION: 27/01/2020

PER: C J MATHEW

This appeal of M/s Shree Shankar Silk Mills lies against order-in-appeal no. SB/288 & 289/Th-I/2010 dated 29th December 2010 of Commissioner of Central Excise (Appeals), Mumbai Zone-I in which, while disposing the appeal of assessee and of Revenue, liability of ₹ 37,37,903 for the period from 16th December 1998 to 31st May 1999 was upheld and the plea of departmental authorities for enhancing the demand by ₹ 36,290, that had been excluded by the original authority, was accepted. Penalty under rule 96ZQ(5)(ii) of Central Excise Rules, 1944 was also enhanced to that extent.

2. The appellant, a manufacturer of 'man-made fabric' and 'cotton fabric', came under the Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998, brought into effect by notification no. 41/98-CE (NT) dated 10th December 1998, for payment of duty of central excise according to annual capacity of production to be determined by the jurisdictional Commissioner of Central Excise. In accordance with the prescribed procedure, the competent authority determined the total number of chambers as 15.84 *vide* final order no. 30/99 dated 14th July 1999 in continuation of provisional order no. 17/98 dated 24th December 1998. The duty liability of the appellant, thus, was to be discharged at ₹ 1,50,000 per chamber. In appeal filed with the Tribunal against this determination, the matter was remanded back for reconsideration of the plea of the appellant therein on the length of galleries attached to the stenter and, *vide* order no. 9/09 dated 4th August 2009, the number of chambers was a pre-determined at 15

after excluding the length of the galleries.

3. The appellant, operating two ‘Harish’ and one ‘Artose’ stenters, claimed the latter to be out of production since 1998 and, having been sealed, after the new rules came into force, on 25th December 1998 had sought abatement which was granted. Proceedings for recovery of duty of ₹ 44.69,226 allegedly short-paid were commenced by notice dated 18th June 1999 culminating in the impugned order which is now under challenge by the assessee.

4. We have heard Learned Counsel for appellant and Learned Authorised Representative.

5. It is contended by the Learned Counsel that the re-determination order dated 4th August 2009 had been issued after the compounded levy scheme was withdrawn *vide* notification no. 6/2001-CE (NT) dated 1st March 2001 and that the re-determination was effected without taking into consideration that there were only two operating stenters. The same aspects were canvassed before the adjudicating, and first appellate authority, in the proceedings leading to the impugned order. Reliance is placed by Learned Counsel on the decision of the Hon’ble High Court of Madras in *Beauty Dyers v. Union of India [2004 (166) ELT 27 (Mad)]* and it was informed that the Hon’ble Supreme Court dismissed the appeal of Revenue on the ground that the enabling enactment had been excluded since then from Central Excise Act, 1944.

6. Learned Authorised Representative points out that the duty liability had not been erased by the decision in *re Beauty Dyers* but had held the petitioners therein to be chargeable by regular assessment under section 3 of Central Excise Act, 1944. Furthermore, it was contended that the issue of abatement would require re-examination.

7. In view of the submissions noted *supra*, we set aside the impugned order and remand the matter back to the original authority for fresh decision on the claim for abatement.

(Pronounced in open court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*