CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 436 of 2012

[Arising out of Order-in-Appeal No. AGS(203)472/2011 dated 23.10.2011 passed by Commissioner of Central Excise & Customs (Appeals), Aurangabad]

M/s. Nanded Textile Mills **Appellant**
Unit of NTC (SM) Ltd. P.O. Box. No. 10,
Mill Road, nanded-431 601.

Vs.

Commissioner of Central Excise &
Service Tax- Aurangabad **Respondent**
Town Centre N-5 CIDCO,
Aurangabad-431 003.

Excise Appeal No. 437 of 2012

[Arising out of Order-in-Appeal No. AGS(201)206/2011 dated 22.12.2011 passed by Commissioner of Central Excise & Customs (Appeals), Aurangabad]

M/s. Nanded Textile Mills **Appellant**
Unit of NTC (SM) Ltd. P.O. Box. No. 10,
Mill Road, nanded-431 601.

Vs.

Commissioner of Central Excise- Aurangabad **Respondent**
Town Centre N-5 CIDCO,
Aurangabad-431 003.

Appearance:

Shri Saurish Shetye, Advocate, for the Appellant
Shri Bhilegaonkar Deepak, Additional Commissioner, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 16.02.2023
Date of Decision: 16.02.2023

FINAL ORDER NO. A/85841-85842/2023

PER: SANJIV SRIVASTAVA

These appeals are directed against order-in-appeal no. AGS(203)472/2011 dated 23.10.2011. By the Impugned order Commissioner (Appeals) upheld in original no. 160/97 dated 28/11/1997 of Assistant Commissioner, Nanded. By this appeal Assistant Commissioner held as follows:

‘ I hereby confirm the demand of 1) Rs. 3,46,426/- 2) Rs. 2,36,363/- 3) Rs. 1,01,865/- 4) Rs. 81,113/- 5) Rs. 4,70,125/- 6) Rs. 1,348/- issued to M/s. NTC, Mill Nanded by Superintendent, C. Ex., Range-I, Nanded.

I hereby also impose the penalty of Rs. 7,00,000/- (Rs. Seven Lakhs only) on M/s. NTC, Mill Nanded.’

1.2 The appeal no. (E/437/2012) has been filed against order-in-appeal no. AGS(201)206/2011 dated 22.12.2011dated 23.10.2011. By the impugned order Commissioner (Appeal) has upheld order in original-no. 45/2004.. dated 14/7/2004 passed by Deputy Commissioner, Nanded. This order is held as follows:

“ *I confirm the duty demands as detailed below for the subject show cause notices under Section 11A of the Central Excise & Salt Act, 1944.*

Sr. No.	Show Cause Notice F. No. 7 date	Amount of C. Ex. Duty confirmed under Section 11A of the C. E. S. A., 1944
1	R-I/Ch.63/NTC/88 dt. 05.10.88	1,88,179.36 (Rounded to Rs. 1,88,179/-)
2	R-I/Ch.63/NTC/88 dt. 28.04.89	4,04,705.99 (Rounded to Rs. 4,04,706/-)
3	R-I/Ch.63/NTC/88 dt. 14.08.89	67,007/-
4	R-I/Ch.63/NTC/88 dt. 12.12.89	1,20,466.24 (Rounded to Rs. 1,20,466/-)
5	R-I/Ch.63/NTC/88 dt. 01.06.90	4,32,082.14 (Rounded to Rs. 4,32,082/-)
6	R-I/NTC/BD&T/SCN/90 dt. 08.11.90 & corrigendum dt. 6.6.91	2,82,910.64 (Rounded to Rs. 2,82,911/-)

7	R-I/NTC/BD&T/90 dt. 28.02.91	4,78,100.63 (Rounded to Rs. 4,78,101/-)
8	R-I/NTC/BD&T/90 dt. 22.10.91	1,87,150/-
9	R-I/NTC/BD&T/90/21 dt. 13.01.92	34,056/-
10	R-I/NTC/BD&T/90/22 dt. 13.01.92	2,39,659/-
11	R-I/NTC/BD&T/90 dt. 28.04.92	1,38,815/-
12	R-I/NTC/BD&T/90 dt. 31.07.92	30,664/-
13	R-I/NTC/BD&T/90 dt. 24.11.92	82,110/-
14	R-I/NTC/SHC/91 dt. 14.05.93	2,10,246/-
15	R-I/NTC/BD&T/90 dt. 17.08.93	4,09,349/-
16	R-I/NTC/BD&T/90 dt. 28.04.94	4,49,858/-

2.1 Appellant is a unit of National Textile Corporation (SM) Ltd. They are engaged in manufacture of cotton yarns and cotton fabrics classifiable under chapter 52 of Central Excise Tariff Act, 1985. Eligibly they manufacture and clear towels and bed sheets falling under chapter 63 of the Central Excise Tariff Act, 1985 without payment of Central excise duty and was obtaining Central excise registration without filing classification and was maintaining as statutory discord as prescribed. Periodic Show cause notices were issued to them demanding show cause notices for the period from March, 1988 to onwards to 2nd January, 1997. These show cause notices were adjudicated as per the orders of Assistant/Deputy Commissioner referred in para 1. Appeal filed by Appellant has been dismissed by the Commissioner (Appeal) vide the impugned orders in this appeal. Accordingly, appeals are dismissed. Hence this appeal.

3.1 We have heard Shri. Saurish Shetye, Advocate for the appellant and Shri. Bhilegaonkar Deepak, Additional Commissioner (AR) for the respondent. Arguing for the appellant Learned Counsel submits that:

‘ *During the disputed period, the appellant cleared Toweling Cloth/Bed Sheet Cloth to the outside contractor for width wise stitching on job work basis and ultimately cleared the same from the premises of the contractors to Asst. Director (prov) DG BSF CGD Complex - New Delhi i.e. Supplies to defense and had not earned the profit out of the same. In the present case the Appellant had place reliance on the Judgment of Jayant Oil Mills reported in 1989 (40) ELT 287 (SC) wherein it was held that every process is not a manufacturing and only that process which transform an old articles into new goods alone amounts to manufacture. In the case in hand Toweling Cloths/ Bed Sheets cloth and Towel pieces / Bed Sheets did not make any transformation so as to the change its name, Character or use. Therefore on this count only the SCN itself is bad in law and had been issued without verifying the records and the notification as issued by the Government from time to time.*

The department of the Respondent however issued 16 SCN for the disputed period from March, 1988 to December, 1993 and have duly demanded duty of Rs. 37,55,359/- on the alleged ground that appellant have manufactured bleach and dyed towels and bed sheets and clear the same without payment of the duty under CH. 63.’

3.2 Learned AR reiterates the findings recorded in the Impugned order.

4.1 We have considered the impugned order along with the submissions made in the appeal during the course of arguments on hearing.

4.2 Upholding the demand for the period April, 1994 to January, 1997 the Commissioner (Appeal) vide order dated 23/12/2011 held as follows:

‘10(a). I have carefully gone through the appeal file, documents available on records and submission made during the course of personal hearing. From the records, I find that appellants were issued with Six Show Cause cum Demand Notices proposing to demand Central Excise duty totally amounting to 12,37,239/-

covering the intermittent period between April-1994 to Januray-1997. The ground for demanding the duty was that the appellant had cleared Bleached and Dyed Towels out of cotton fabrics without payment of duty under Chapter heading no.63.01 of the schedule to Central Excise Tariff Act, 1985. From the impugned OIO, I find that appellant had paid Central Excise duty on the toweling cloth under Chapter 52 of the schedule to Central Excise Tariff Act, 1985 and the finished goods manufactured out of which were supplied to Assistant Director (Prov.), D.G., B.S.F., New Delhi as per the order placed by Director General of Supplies, Govt. of India.

(b). Contention raised by the appellant that the widthwise cutting and stitching should not be held to be manufacture under Section 2(f) of Central Excise Act, 1944, is not tenable in law because as per Section note 5(b) of Section XI of first schedule to Central Excise Tariff Act, 1985 'made up' means

"produced in the finished state, ready for use (or merely needing separation by cutting, dividing threads) without sewing or other working (for example certain dusters, towels, table cloths, scarf, squares, blankets)".

Therefore, the activity undertook by the appellant clearly amounts to manufacture engaged in the manufacture of 'made up' articles.

(c). As regards to applicability of Notification no.65/87 dated 01.03.1987, I find that since the period covered under the impugned O10 is from April-1994 onwards therefore the Notification is not applicable. I also find that the appellant never classified their product as Terry towel.

(d). As regards to the plea regarding adjustment of duty already paid by the appellant under Chapter 52 of Central Excise Tariff Act, 1985, I find that in absence of any explicit provision in the law such request cannot be acceded to.'

4.4 For upholding the demand for the period from March 1988 to December 1993 Commissioner (Appeal) is held as follows:

'As regards to clearances to bed sheets I find that the exemption notification no. 65/87 as amended was not applicable to the bed

sheets. Though the appellants have shown their willingness to discharge the duty liability by paying the differential duty, the appellants are required to pay the duty as demanded in the Impugned order OIO under chapter heading 63.01 of Central Excise Tariff Act, 1985.'

4.5 For the period March 1988 to December 1993 it is a claim of appellant that the goods cleared by them were exempted under notification no. 65/87 as held in **Divya Enterprises Ltd. [2000(115) E.L.T. 66 (Tribunal)].**

4.6 This notification was amended by notification no.83/88 dated 1/3/1988 and for entry no. 5 above following was substituted:

(1)	(2)	(3)	(4)
05.	6301.00	Blankets and Terry towels	Duty for the time being leviable on fabrics of Chapter 52,53,54,55,56 or 58 which correspond to these articles.

4.7 This entry was further amended by notification no. 245/88 dated 23/8)1998 to substitute as follows:

(1)	(2)	(3)	(4)	(5)
5.	6301.00	Blankets and Terry Towels	Nil	If appropriate duty of Excise for the time being leviable on fabrics of Chapter 51,52,53,54 or 55 which correspond to these articles has already been paid.

4.8 This notification was amended by the notification no. 55/89 dated 1/3/1989 the entry was amended deleting the word "terry" in the column 3 of the earlier notification. In the impugned order it has been recorded that appellant has paid Central excise duty on disputed products under chapter 52 of Central Excise Tariff and the said goods were supplied as per the orders placed by Director General Of Supplies of Government of India. Commissioner appeal has also recorded in the impugned order that appellant have on the classification list and other documents not declared the goods cleared as towel but as toweling cloth. Therefore, the benefit of the notification will not be available to the appellants. In respect of bed sheets Commissioner (Appeal) has recorded that appellant have shown their willingness to discharge the duty liability by paying differential duty as the said goods were not covered under the notifications. Appellants have also paid duty as required in chapter 52 but Commissioner (Appeal) has not allowed adjustment for the same in absence of any provision of the law. The reason for denial of the benefit under exemption notification no. 65/87 as per the Commissioner (Appeal) is that goods cleared by the appellant were toweling cloth and not Terry towels/towels. The said reason is without any rational as if the goods were not made up as towel/ Terry towel they would not merit classification under chapter 63. Simple bleached toweling cloth will be cotton fabric classifiable under chapter 5201 on which appellant have discharged the duty as required under chapter 52. That been so the demand made would not survive. In case it is held that these are the towels/ Terry towels classifiable under chapter 6301 the benefit of this exemption notification will have to be extended to the appellant and to that extent of order of Commissioner (Appeal) cannot survive. In respect of bed sheets no evidence is forthcoming that they have acquired the bed sheets and cannot be classified as fabrics. That been so they cannot be treated as bed sheets under chapter 63.

The objection that Commissioner (Appeal) has made on non adjustment of the duty paid under chapter 52 for making demand under chapter 6301 of the same case has been considered by the Hon'ble Supreme Court in case of Divya Enterprises Limited [2003 (153) ELT 497 (SC)] has held as follows:

3.*Under this Notification Terry towelling was exempted. However the terry-towelling fabric was not exempted. Respondents have paid duty on the exempted item i.e. on towels but duty has not* *been paid on the fabric. As the notification does not exempt fabrics, duty has to be paid on the fabric under the Heading "5802.12". We, however, direct that the respondent will be given adjustment for the duty paid on the towels. If on calculation of duty, it is found that a higher amount has been paid than what is due on the fabric, then the claim for refund will be allowed. If on the other hand it is found that some duty has still to be paid then the respondent shall pay the duty.*

5.1 In view of above we do not find any merits in this appeal and are set aside. Appeals are allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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