# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
## REGIONAL BENCH
## COURT No. 5

### Excise Appeal No. 89287 of 2013

(Arising out of Order-in-Appeal No. AV(262-263) 246, 256/2013 dated 05.09.2013 passed by the Commissioner of Central Excise & Customs (Appeals), Aurangabad)

**M/s. Garware Polyester Ltd.** **Appellant**
(Polyester Film Plant),
L-6, MIDC, Chikalthana,
Aurangabad

Vs.

**Commissioner of CE & ST, Aurangabad** **Respondent**
N-5, Town Centre, CIDCO,
Aurangabad 431 030.

AND

### Excise Appeal No. 89288 of 2013

(Arising out of Order-in-Appeal No. AV(262-263) 246, 256/2013 dated 05.09.2013 passed by the Commissioner of Central Excise & Customs (Appeals), Aurangabad)

**M/s. Garware Polyester Ltd.** **Appellant**
(Polyester Film Plant),
Aurangabad-Pune Road,
Waluj, Aurangabad 431 133.

Vs.

**Commissioner of CE & ST, Aurangabad** **Respondent**
N-5, Town Centre, CIDCO,
Aurangabad 431 030.

Appearance:

Shri Rajesh Ostwal, Advocate, for the Appellant
Shri Xavier P. Mascarenhas, Superintendent, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**
**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

Date of Hearing: 08.02.2024
Date of Decision: 07.03.2024

### FINAL ORDER NO. 85269-85270/2024

PER: ANIL G. SHAKKARWAR

Above stated two appeals are taken together for decision since they are arising out of common impugned order-in-appeal dated 05.09.2013.

2. Brief facts of the case are that the appellant is engaged in the manufacture of polyester films falling under Chapter 39 of Schedule attached to Central Excise Tariff Act, 1985. Appellant has two units at Aurangabad – one at Chikalthana and another at Waluj. Appellant is also having another unit in Nashik. Appellant clears polyester film on stock transfer basis from one factory for production of sun control films to another factory of their own. Since sale is not involved, assessment is done as provided under Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods), Rules 2000 on the basis of CAS-4 certificate. In both the units of the appellant since 01.07.2000, jurisdictional Assistant Commissioner has been ordering provisional assessment on quarterly basis and on the basis of CAS-4 certificate for a particular quarter. Assessments were finalized for that quarter and assessment finalization orders were passed by jurisdictional Assistant Commissioners. In respect of Chikalthana unit, on 12.07.2013 jurisdictional Assistant Commissioner passed provisional assessment order keeping the assessment pending for one year and directed the appellant to produce CAS-4 certificate for the entire year. He has stated in his said order that the Deputy Director (Cost) in his reports dated 09.05.2012, 16.05.2012, 23.05.2012 and 12.07.2012 made certain observations. He stated the said observations in his said order which are as follows:-

*"a) The quarterly CAS-4 submitted by the assessee is based on mere projections and past experience of consumptions & therefore accuracy could not be established by the department at any stage while approving the CAS-4 on quarterly basis.*

*b) M/S Garware Polyester Ltd.. Aurangabad while preparing the CAS-4 for relevant quarter has not taken many details which has bearing on cost while calculating the cost of production such as quality control, post production expenses, transportation charges, loading and un-loading charges, bank charges.*

*c) The expenditure heads are credited due to mis-classification hence expenditure is shown at lower side.*

*d) Quarterly CAS-4 is prepared based on unaudited figures and forecast based on experience.*

*e) Purchases made of raw material are shown in other heads hence material cost is understated.*

*f) Closing Inventories / opening inventories are not considered in quarterly CAS-4.*

*g) Inter unit transfer of raw material is not considered in quarterly CAS-4.*

*h) The raw material introduced in production process is in Kg./MT as per CAS-4 but final product i.e. Sun Control Film is in lakh Sq.ft. So the conversion ratio of Kg. to Lakh Sq.ft should be known while examining the CAS-4."*

Similarly worded order for provisional assessment was issued by jurisdictional Assistant Commissioner on 14.06.2013 in respect of Waluj unit. Appellant challenged both the orders before learned Commissioner (Appeals). Appellant contended in their appeal before learned Commissioner (Appeals) that the learned original authority has passed the said provisional assessment orders on the basis of preliminary findings of Deputy Director (Cost) and without calling for any information, document or evidence from the appellant and any verification of the correctness of the said observations, the provisional assessment orders were passed and the same were passed in violation of the principles of natural justice. Learned Commissioner (Appeals) decided similar appeals filed in respect of two units of the appellant, through a common impugned order-in-appeal. In respect of the observations by Deputy Director (Cost), learned Commissioner (Appeals) has stated at para 6.5 of his impugned order that the said observations were not opinions or interpretations and those were factual points and did not interfere with the provisional assessment orders challenged before him. Aggrieved by the said order, appellant is before this Tribunal through the above stated two appeals.

3. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that based on the observations by Deputy Director (Cost) through his very reports dated 09.05.2012, 16.05.2012, 23.05.2012 and 12.07.2012, two show cause notices were issued to the appellant in respect of the two units demanding differential duty on the basis of the observations of Deputy Director (Cost). Both the show cause notices were adjudicated by Commissioner of Central Excise, Aurangabad through his order-in-original dated 30.06.2014. Learned Commissioner of Central Excise, Aurangabad in his said order at para 18.2 has observed that when the correspondence was made with the Deputy Director (Cost) by the jurisdictional Central Excise officers having jurisdiction over the appellant, it was established that calculation sheets were not available anywhere on the basis of which observations were communicated by Deputy Director (Cost). Learned counsel has submitted that for the said reason, Commissioner of Central Excise, Aurangabad dropped the demands raised in the said show cause notices. He has further submitted that the impugned order is on the basis of assumptions and presumptions and there is no material available on record to establish that the said observations of Deputy Director (Cost) are the facts. He has pleaded to set aside the impugned order.

4. Heard the learned AR for Revenue. Learned AR has supported the impugned order.

5. We have carefully gone through the record of the case and submissions made. We note that learned Commissioner (Appeals) has held that the above stated observations of Deputy Director (Cost) were facts. We are at a loss to understand how learned Commissioner (Appeals) has come to a conclusion that the said observations were on the basis of fact because there is no supporting data available either in the orders ordering provisional assessment nor is it available anywhere in the order passed by Commissioner (Appeals). We, therefore, hold that the

impugned order is a presumptive order. We, therefore, set aside the impugned order.

6. In above terms we allow both the appeals.

(Order pronounced in the open court on 07.03.2024)

**(Anil G. Shakkarwar)**
**Member (Technical)**

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

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