CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Custom Appeal No. 85110 of 2013

[Arising out of Order-in-Original No.26/CUS/COMMR/KOP/2012 dated 09.10.2012 passed by the Commissioner of Central Excise & Service Tax, Kolhapur]

Eurotex Industries & Exports Ltd. **......Appellant**
Plot No.E-23,MIDC, Gokul Shirgaon,
Kolhapur -416234.

VERSUS

Commissioner of Central Excise & Service Tax, **......Respondent**
Kolhapur Commissionerate
4th Floor, Vasant Plaza, Rajaram Road, Bagal Chowk,
Kolhapur – 416 001.

APPEARANCE:

Shri Viraj Reshmawala, Advocate for the Appellant
Shri D.S. Maan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85060/2025

Date of Hearing:17.01.2025
Date of Decision:17.01.2025

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. The appellant herein is a 100% Export Oriented Unit (EOU), engaged in the manufacture of Cotton Yarn, falling under Chapter sub-heading 5205 11 and Knitted Grey Fabrics, falling under Chapter sub-heading 6002 92 of the Central Excise Tariff Act, 1985. In respect of the cotton yarn and the rejected waste generated during the course of

manufacture of the said final product, the appellant had claimed the benefit provided under Notification No. 52/2003-Cus. dated 31.03.2003 for non-payment of duty on clearance of the said product outside the factory premises. However, non-payment of Central Excise Duty was objected to by the department and accordingly, proceedings were initiated for recovery of the Central Excise duty from the appellants. The show cause notice issued in this regard was adjudicated by the learned Commissioner of Central Excise & Service Tax, Kolhapur vide the impugned order dated 09.10.2012, wherein Central Excise duty demand of Rs.65,53,984/- along with interest was confirmed and equal amount of penalty was imposed on the appellant. Feeling aggrieved with impugned order dated 09.10.2012, the appellant has preferred this appeal before the Tribunal.

3. The issue whether the phrase payment of "appropriate rate of duty" used in the exemption Notification No. 53/1997-Cus., dated 03.06.1997 should be equated with the clearance of finished goods at 'nil rate of duty', was the subject matter of dispute before the Co-ordinate Benches of the Tribunal and finally the matter was referred to the Larger Bench for resolution of the dispute. The Larger Bench vide Interim Order No.26/2024 dated 11.11.2024 has held as under:

> *"11. The division bench hearing this appeal had doubted the correctness of the view taken by the Tribunal in Technocraft Industries on 13.08.2019. Subsequently, as noticed above, the Bombay High Court, in the judgment rendered on 03.10.2023 has by a detailed order upheld the view taken by the Tribunal in Technocraft Industries. The reference was made on 14.10.2020. The division bench hearing this appeal did not have the advantage of the Bombay High Court judgment in Technocraft Industries.*
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> *12. In view of the aforesaid decision of the Bombay High Court in Technocraft Industries, the reference would have to be answered in the following manner: "(a) The term appropriate rate of duty used in Excise Notification dated 31.03.2003 and Customs Notification 12 dated 31.03.2003 will cover a case where the finished goods are cleared on payment of duty at 'Nil' rate; and (b) The decision of the division bench of the Tribunal*

> *in Technocraft Industries holding that the benefit of these two Notifications shall be admissible even when the finished goods are cleared on payment of duty at "Nil" rate is correct."*

In view of the fact that the issue arising out of the present dispute is no more *res integara,* in view of the Interim Order dated 11.11.2024 passed by the Larger Bench of the Tribunal, we are of the view that the adjudged demands confirmed in the impugned order cannot be sustained.

4. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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