CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85428 TO 85466 OF 2014

[Arising out of Order-in-Appeal No: 993 to 1031 (CFS-MULUND)/2013(JNCH)/IMP-764 to 802 dated 23rd October 2013 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Artex Textile Pvt Ltd
1014 D-Mall, Netaji Subhash Place
Pitampura, New Delhi - 110034 … ***Appellant***

versus

Commissioner of Customs
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 88311, 88320, 88323, 88327 TO 88368 OF 2014

[Arising out of Order-in-Appeal No: 1765 to 1809 (ICD-MULUND)/2014(JNCH)/IMP-1695 to 1739 dated 23rd April 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Artex Textile Pvt Ltd
1014 D-Mall, Netaji Subhash Place
Pitampura, New Delhi - 110034 … ***Appellant***

versus

Commissioner of Customs
New Custom House, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 88610 TO 88613, 88645 & 88646 OF 2014

[Arising out of Order-in-Appeal No: 2640 to 2645-CFS-MULUND)/2014(JNCH)/IMP-2509 to 2514 dated 26th June 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Artex Textile Pvt Ltd
1014 D-Mall, Netaji Subhash Place
Pitampura, New Delhi - 110034 … ***Appellant***

versus

Commissioner of Customs
New Custom House, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 86448 TO 86454, 86458, 86462. 86464, 86466, 86468 TO 86476, 86480 TO 86484, 86487, 86488, 86490 TO 86495, 86497 TO 86500 & 86503 OF 2015

[Arising out of Order-in-Appeal No: MUM-CUSTM-SMP- 26 to 64/2015-16 dated 25th May 2015 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

Artex Textile Pvt Ltd
1014 D-Mall, Netaji Subhash Place
Pitampura, New Delhi - 110034 … ***Appellant***

versus

Commissioner of Customs
New Custom House, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 88616, 88617, 88620 to 88628 & 88630 OF 2014

[Arising out of Order-in-Appeal No: 2356 to 2367-CFS-MULUND)/2014(JNCH)/IMP-2260 to 2271 dated 5th June 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Artex Textile Pvt Ltd
1014 D-Mall, Netaji Subhash Place
Pitampura, New Delhi - 110034 … ***Appellant***

versus

Commissioner of Customs
New Custom House, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 88614, 88615, 88618, 88619, 88629, 88633 TO 88635, 88643 & 88644 OF 2014

[Arising out of Order-in-Appeal No: 2644 to 2654(CFS/MULUND)/2014(JNCH)/IMP-2515 to 2525 dated 26th June 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Artex Textile Pvt Ltd
1014 D-Mall, Netaji Subhash Place
Pitampura, New Delhi - 110034 … ***Appellant***

versus

Commissioner of Customs
New Custom House, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 88631, 88632, 88636 TO 88642 & 88647 TO 88649 OF 2014

[Arising out of Order-in-Appeal No: 2344 to 2355(ICD-MULUND)/2014(JNCH)/IMP-2248 to 2259 dated 26th June 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Artex Textile Pvt Ltd
1014 D-Mall, Netaji Subhash Place
Pitampura, New Delhi - 110034 … ***Appellant***

versus

Commissioner of Customs
New Custom House, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri Prem Ranjan, Advocate for the appellant

Shri Deepak Sharma, Deputy Commissioner (AR) for the respondent

AND

CUSTOMS APPEAL NO: 88554 TO 88557 OF 2014

[Arising out of Order-in-Appeal No: 2640 to 2645(CFS-MULUND)/2014(JNCH)/IMP-2509 to 2514 dated 26th June 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Commissioner of Customs (General)
Mumbai Zone – I
New Custom House, Mumbai - 400001 … ***Appellant***

versus

Artex Textile Pvt Ltd
Gali No.4, Shalimar Village, Industrial Area
New Delhi – 110088 ***…Respondent***

APPEARANCE:

Shri Deepak Sharma, Deputy Commissioner (AR) for the appellant

Shri Prem Ranjan, Advocate for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86431-86615/2025

DATE OF HEARING: 28/04/2025
DATE OF DECISION: 09/10/2025

PER: C J MATHEW

These batches of appeals, with their own permutations and combinations of disputes, have been filed by M/s Artex Textile Pvt Ltd; one appeal is that of Commissioner of Customs (General), Mumbai. The common thread in these are about re-assessment under section 17(4) of Customs Act, 1962 that was affirmed in some of the appeals before the first appellate authority and the denial of benefit of 'additional duty of customs' in the others.

2. M/s Artex Textiles Pvt Ltd is an importer of ‘polyester fabrics’ and the ‘proper officer’ under section 17 of Customs Act, 1962 enhanced the assessable value which, on appeal, was set aside in all except one with the finding that rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 had not been invoked. The claim for charging ‘additional duty of customs’ by recourse to exemption notification under Central Excise Act, 1944 was disallowed and hence the appeals.

3. The appeal of the jurisdictional Commissioner of Customs rests upon the process in rule 12 and of rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 having been followed for enhancement of assessable value.

4. We have heard Learned Counsel for appellant-importer and Learned Authorized to Representative.

5. We find that the enhancement of value was affirmed by recourse to rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However, the surrogate value adopted for the purpose pertains to imports of later date, *viz.*, bills of entry no. 2081636/09.05.2013 and no. 3068672/22.08.2013 and is, by no stretch, contemporaneous. Consequently, the benchmark value is not tenable and the enhancement is without authority of law. As far as the other imports are concerned, the process under rule 12 of Customs Valuation

(Determination of Value of Imported Goods) Rules, 2007 has not been undertaken and, consequently, the enhancement is without authority of law. The appeals of Commissioner of Customs is dismissed and, to the extent enhancement was challenged in appeal by the importer, is set aside.

6. As far as denial of discharge of duty liability by recourse to exemption notification under section Central Excise Act, 1944 is concerned, we find that the first appellate authority[1] has held that

> *'12. I find that another issue in the present appeals is whether the benefit of notification no. 30/2004-CE is available to the appellant or not. I find that under the impugned notification, certain category of assesses only have been granted exemptions for the inputs or goods used in the manufacturing process. For ready reference, a copy of the relevant gist of the impugned notification is reproduced as under:*
>
> > *G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) read with subsection (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No 30/2004-Central Excise, dated the 9th July, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. 421(E), dated the 9th July, 2004, namely :-*
> >
> > *In the said notification, in the Table, against serial number 16, for the existing entry in column (3), the entry "All goods" shall be substituted."*
>
> *Therefore, the said exemption was issued under sub-section (1) of*

[1] [order-in-appeal no. MUM-CUSTM-SMP- 26 to 64/2015-16 dated 25th May 2015]

section 5A of the Central Excise Act, 1944 (1 of 1944) read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Therefore, it is appropriate to mention the provisions of sub-section (1) of section 5A of the Central Excise Act, 1944 and section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 as under for ready reference:

> *SECTION 5A of the Central Excise Act, 1944. [Power to grant exemption from duty of excise. — (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon:*
>
> *Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured --*
>
> *in a [free trade zone [or a special (i) brought to any other place in India; or economic zone]]*
>
> *by a hundred per cent export-oriented (ii) [brought to any place in India] undertaking and*
>
> *Explanation, — In this proviso, ['free trade zone", ["special economic zone"]] and "hundred per cent export-oriented undertaking" shall have the same meanings as in Explanation 2 to sub-section (1) of section 3.*
>
> *Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957:*
>
> *"Section 3. Levy and collection of Additional Duties. — (1) There shall be levied and collected in respect of the goods described in column (3) of the First Schedule produced or manufactured in India and on all such goods lying in stock within the precincts of any factory, warehouse or other premises where the said goods were manufactured, stored or produced, or in any premises appurtenant thereto duties of excise at the rate or rates specified in column (4) of the said Schedule.*
>
> *(2) The duties of excise referred to in sub-section (1) in respect of the goods specified therein shall be in addition to the duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944), or any other law for the time being in force.*

> *(3) The provisions of the Central Excise Act, 1944 (1 of 1944), and the rules made there under, including those relating to refunds, exemptions from duty, offences and penalties, shall, so far as may be, apply in relation to, the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in sub-section (1)".*

From the above provisions, it is apparent that the iimpugried benefit under the notification no. 30/2004-C.EX dated 9.7.2004 read with Notification No. 11/2003-C.EX dated 1.3.2013 as amended is subject to the condition that the appellant:

i) The goods should be produced or manufactured in INDIA;

ii) The goods shall be in column (3) of the First Schedule;

iii) All such goods lying in stock within the precincts of any factory, warehouse or other premises where the said goods were manufactured, stored or produced, or in any premises appurtenant thereto.

13. In this regard, it is noticed that in the case of M/s. Gammon India Ltd vs. Commissioner of Customs, Mumbai 2011(269} ELT 289 (S.C.), the Apex Court reconfirmed strict interpretation of the exemption notification. It is an established law that for granting a benefit under a notification, the conditions of the notification have to be construed strictly. In this regard the attention is drawn to be findings of the Apex Court in the case M/s. Mihir Textiles Ltd. Vs. Collector of Customs, Bombay, 1997(92) E.L.T. 9 (S.C.) . The attention is further drawn to the findings of Apex Court in the case of CC, Central Excise Vs. Hari Chand Shri Gopal 2010(260) ELT3 (SC), wherein it was held the party must establish clearly that he is covered by the said provisions of the notification and in case of doubt or ambiguity, the benefit of it must go to the state. The Hon'ble Supreme Court in the case of Hem raj Govardhandas 1978(2)ELT J350(SC) held that" it is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is *governed wholly by the language of the notifications". In view of the above, it is clear that a notification benefit shall be extended strictly to the goods mentioned in the said notification but not to any other goods. Since the notification covers only "the goods produced or manufactured in INDIA", therefore, the benefit of the notification no. 30/2004-CX dated 09.07.2004 read with Notification No. 11/2003-C.EX dated 1.3.2013, is not available to the appellants.'*

7. On the other hand,

'3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges—

(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article:

Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States or, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

> *Explanation--In this sub-section, the expression the excise duty for the time being leviable on a like article if produced or manufactured in India means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.'*

in Customs Tariff Act, 1975 makes it clear that duty rate chargeable on like goods produced or manufactured in India is to be applicable. Furthermore, in deciding upon challenge to assessment under Customs Act, 1962, there is no scope for any reference to any other law. It may be noted that section 3(1) of Customs Tariff Act, 1975 makes no reference either. Consequently, the denial of effective rate of duty is not tenable. The impugned orders are set aside to allow the appeals.

(Order pronounced in the open court on 09/10/2025)

(AJAY SHARMA)	**(C J MATHEW)**
Member (Judicial)	***Member (Technical)***

**/as*