

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 1065 of 2011-DB

[Arising out of Order-in-Original/Appeal No BC-85-SURAT-II-2011 dated 10.05.2011 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II]

Maheshwari Texturisers Limited

.... Appellant

Block No. 792, Plot No. 38, B/h Ankur Shopping
Centre Kudsad, Tal-olpad, SURAT, UJARAT

VERSUS

Commissioner of Central Excise & ST, Surat-ii

.... Respondent

New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE :

Shri H.D. Dave, Advocate for the Appellant

Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

DATE OF HEARING: 16.03.2022

DATE OF DECISION: 04.07.2022

FINAL ORDER NO. A/10776 / 2022

RAMESH NAIR :

The brief facts of the case are that the appellant are engaged in the manufacture of excisable goods namely Polyester Texturised Yarn (crimped yarn) falling under Chapter 5402 of Central Excise Tariff Act, 1985. For the manufacture of texturised yarn, the appellant procured polyester chips falling and Chapter heading 39 and they sent it to job workers for manufacture of intermediate goods namely Partially Oriented Yarn falling under Chapter 54.02. After receipt from the job workers, the same is used captively for manufacture of their final product namely Polyester Texturised Yarn.

2. The case of the department is that the appellant is required to pay National Calamity Contingent Duty (NCCD) in respect of POY falling under Chapter 5402 used captively, on the ground that Notification No. 67/95-CE dated 16.03.1995 does not exempt from payment of NCCD. Accordingly, duty demand of NCCD of Rs. 2,22,741/- along with interest and equal amount of interest has been confirmed. The same was upheld by the learned Commissioner (Appeals), therefore the present appeal is filed by the appellant.

3. Shri H.D. Dave, learned Counsel appearing on behalf of the appellant submits a synopsis dated 17.11.2021. He argued that issue has been squarely covered in their favour that NCCD is not payable on any goods under Chapter heading 5402 at any stage from Polyester Texturised Yarn stage to Partially Oriented Yarn stage on job work basis. He placed reliance on the judgment in the case of *Filatex India Limited vs. CCE, Vapi - 2014 (302) ELT 446 (Tri. Ahmd.)*. He mainly argued that the entire demand is time barred since for the demands of July 2003 to July 2004 the show cause notice was issued on 31.07.2008. He submits that during obtaining registration itself the entire process of their manufacture of Polyester Texturised Yarn from chips including Partially Oriented Yarn by job work was explained. Further, ER-1 returns were regularly filed though department was aware of entire activities including job work of the appellant, they never questioned the same during the relevant period. He further submits that even though there is no complete exemption from payment of NCCD on Partially Oriented Yarn or at Polyester Texturised Yarn under Notification No. 46/2003-CE, the appellant paid the same through credit balance of excise duty. This issue is already settled in the case of *Sanathan Texturisers vs. CCE, Vapi - 2007 (209) ELT 445 (Tri. Ahmd.)*. He further submits that there

is no question of any penalty or interest since this is a case of interpretation of notification and the issue of NCCD at the relevant time. The issue was settled as per the following judgments:-

- (a) Filatex India Limited vs. CCE, Vapi – 2014 (302) ELT 446 (Tri. Ahmd.)
- (b) Sanathan Texturisers vs. CCE, Vapi – 2007 (209) ELT 445 (Tri. Ahmd.).
- (c) Dharampal Satyapal vs. CCE, Shilong – 2016 (340) ELT 376 (Tri. Kolkata)
- (d) CCE, Mumbai vs. Indorama Synthetics – 2014 (307) ELT 805 (Tri. Mumbai)

4. On behalf of the Revenue, Shri Prakash Kumar Singh, learned Superintendent, Authorised Representative appeared. He submitted a written submission dated 16.03.2022 and also reiterates the findings of the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the record. On going through the entire case, we are of the opinion that the case can be decided on the ground of limitation itself. We find that the issue involved is of levy of NCCD in respect of Partially Oriented Yarn falling under Chapter 5402 consumed captively for the manufacture of Polyester Texturised Yarn. On the said issue, there are number of judgments as cited by the appellant and some of the judgments are in favour of the appellant. The issue involved is a neat question of law which involved interpretation of exemption provided in respect of NCCD. It is also a fact on record that appellant have declared their manufacturing process to the department and they were filing ER-1 returns regularly. Since the activity of entire manufacturing i.e. right from the polyester chips stage to the final stage i.e. Polyester Texturised Yarn including the manufacture of

intermediate goods on job work basis were in the knowledge of the department, it cannot be said that there is any suppression of fact on the part of the appellant. In respect of the entire demand which is for the period from 01.07.2003 to 31.07.2004, the show cause notice was issued on 31.07.2008. The entire period is beyond one year, hence the demand under proviso to Section 11AC is not sustainable. Accordingly, the demand is hit by limitation hence the impugned order is set-aside and the appeal is allowed only on limitation without going into merits of the case.

(Pronounced in the open court on 04.07.2022)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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