Customs, Excise and Gold Tribunal - Mumbai
Alpic India And Shiv Textile vs Commissioner Of Central Excise on 31 March, 2006
Bench: A Wadhwa, S T S.S.
ORDER S.S. Sekhon, Member (T)

1. The appellants M/s Shiv Textiles are engaged in the processing of fabrics falling under chapter 54. The officers visited the factory and on verification noticed that part of the premises was in occupation of one M/s Alpic India who carried out the process of receiving gray fabrics, checking, dyeing, bleaching, mercerising and printing of the said fabrics without the aid of power. The appellants were carrying out the process with the aid of power along declarations under notification no 13/92 stating that they would process powerloom fabries falling under chapter heading 52&54 of CETA 1985 with the aid of power (i.e. stentering, calendering, folding and bale packing) and claiming duty exemptions under notification 4/97 and 9/96 respectively declarations were filed accordingly. Similarly M/s Alpic (India) had filed a declaration under the said notification 13/92(N.T) that they will process powerloom fabrics without the aid of power and steam. The verification of the stock was conducted, samples were drawn and on the suspicion that quality of fabrics was different from the quality shown under a panchnama dtd 9/7/98 officers detained 21 bales of finished processed fabrics on the reasonable belief of the same being liable to confiscation, Consequent to the test results, it was found that nine lots out of the 21 lots of detained fabrics there was a predominance of polyester in the fabrics composition in respect of samples of unfinished/semi-finished goods of M/s Alpic (India), the test results revealed that in respect of seven lots there was a predominance of polyester. The nine lots seized were considered to be chargeable to duty. Statements of the partner were recorded and show cause notice dtd 4/1/99 was issued alleging.

i) M/s Shiv Textile had processed man made fabrics containing predominance of polyester with an intent to evade duty.

ii) M/s Shiv Textile had cleared processed man made fabrics admeasuring 43039.501.mtrs/38,305.15 sq mtrs valued at Rs. 6,03,306.11 in the past clandestinely with an intent to evade payment of duty.

2. The Ld. Jt. Commissioner after hearing the appellants and considering that for a duty demand of Rs. 68,626.87 there was no sustainable proof that the said fabrics were processed and thereafter cleared, dropped the demands, However the remaining demands were confirmed and penalties imposed. In appeal, the Commissioner (Appeals) directed the applicants to deposit the entire duty and on failure to do so, rejected the appeal on grounds of non-compliance of Section 35F of the Central Excise Act, 1944. Tribunal vide its order dtd 11/6/02 remitted the matter back. The Commissioner (Appeals) after complying with the Tribunals order passed the present order now impugned before us ordering that.

i) "The woven fabrics of 21274.50 LM confiscated stentered with the aid of power at the premises of M/s Shiv Textiles, valued at Rs. 2,98,226.25 are leviable to Central Excise duty of Rs. 59,645.25 (BED Rs. 25,787.15 + AED Rs. 23,858.10). The confiscation of these seized goods (provisionally

released on execution of Bond & Bank Guarantee of Rs. 75,000/- and imposition of redemption fine of Rs. 75,000/- in lieu of confiscation is also legally proper & correct.

ii) In respect of unfinished woven fabrics of 18,560.50LM valued at Rs. 2,60,171.73 involving Central Excise duty of Rs. 52,034.00 (BED Rs. 31,220.60 + AED Rs. 20813.73) belonging to M/s Alpic (I) Shri G.H. Talele, Manager of M/s Alpic (I) in his statement dtd 28/7/98 interalia had stated that these unfinished/semifinished fabrics pertaining to the 8 lots, were returned to the merchant manufacturers in the unfinished conditions; that he would send the delivery challans in due course of time. However, he had failed to furnish the documentary evidence of having returned these goods in unfinished condition. Since M/s Alpic (I) had discharged the burden cast on them, it is reasonably believed that the said goods were cleared to the respective customers after stentering with the aid of power. As such, the demand of Rs. 52,034/- confirmed by the adjudicating authority appears to be legal and proper.

iii) As regards the imposition of penalty of Rs. 1,11,680/- on M/s Shiv Textiles under Section 11AC, ibid read with Rule 173Q(1),209 & 226 of CER 1944, it is already held that the proviso to Section 11A(i) of CEA 1944 is applicable to the present case. Moreover, the decisions in the case of Paras Prints Pvt. Ltd. v. CCE Surat , CCE v. Suzuki Processors, 000 (122) ELT 638 (T) & Prabu Steel Industries ltd. v. CCE Nagpur are distinguishable from the present case, as, those cases pertained to manufacturers who were registered with Central Excise Department and filing the price declarations & classifications list from time to time. Therefore, the provisions of Section 11AC of CEA 1944 are correctly applicable to the present case.

iv) As regards, the imposition of personal penalty of Rs. 20,000/- on Shri Shivkant Khetan, Partner of M/s Shiv Textiles, it is now well settled by the Hon'ble Tribunal in the case of CCE v. Suzuki Processors 2000 (122) ELT 639 (T), CCE v. A.K. Spintex 2000 (127) ELT 552 (T) that penalty if imposed on the firm, the same should not be imposed on the partner. Hence the same is set aside.

v) The complicity of M/s Alpic (I) is proved in the aforesaid evasion of Central Excise duty and the same has been brought clearly in the SCN. It is well settled that if a rule is wrongly quoted but the intention was brought out clearly, the penalty cannot be set aside. Hence the penalty of Rs. 10,000/- imposed on M/s Alpic (I) under Rule 173Q of CER 1944 is ordered to be confirmed under Rule 209A of CER 1944.

Thus, from the above, the allegations framed by the department get confirmed clearly. The personal penalty of Rs. 20,000/- imposed on Shri Shikant Khetan, Partner of M/s Shiv Textiles under Rule 209A of CER 1944 however, is required to be set aside and the penalty of Rs. 10,000/- imposed on M/s Alpic (I) under Rule 173Q(1) is required to be modified as having been imposed under Rule 209A of CER 1944. The remaining operative part of the OIO No. 12/M/2001 dtd 31/1/01 passed by the Jt. Commissioner of Central Excise, Mumbai III Commissionerate is to be held to be proper and correct.

Therefore, taking into consideration all the facts, I set aside the penalty of Rs. 20,000/- imposed on Shri Shivkant Khetan, partner of M/s Shiv Textiles under Rule 209A of CER 1944 and amend the

penalty of Rs. 10.000/- imposed under Rule 173Q(1) of CER 1944 on M/s Alpic (1) to be under Rule 209A of CER 1944. I however, do not find any valid grounds to interfere with the remaining part of the OIO No. 12/MK/2001 dtd 31/1/01 passed by the Jt. Commissioner of Central Excise, Mumbai III, Commissionerate.

Hence these appeals.

5. After hearing both sides & considering the material it is found and held as -

a) the appellants contention that vide a declaration dtd 10/4/98 claiming benefit of notification No. 4/97 and 9/96. They have categorically mentioned that the process of stentering, felt calendering, folding & bale packing to be carried out with the aid of power and steam. This submission of the appellant does not appear to have been considered though it has been recorded by the Commissioner. Commissioner is finding that the fabrics were cleared after stentering with the aid of power both by i.e. M/s Alpic (I) Ltd. & M/s Shiv Textiles in contravention of the provisions of the Act of the rules and after considering the charge as alleged in the show cause notice, he confirmed the order now impugned before us. There is no categorical finding arrived as to how the proviso clause could be invoked in the facts of this case. The orders suffers from the vice of non application of mind and is therefore required to be held as unsustainable.

b) Confirmation of demands is thus erroneous and is to be set aside and the matter is required to be remitted back to the Ld. Commissioner (Appeals) with directions that a clear finding on all issues raised by the assessee should be arrived at and thereafter decision given. The order should be speaking and should enable to understand as to how the liabilities, if any are arrived.

3. In this view of the matter we would set aside this order and allow these appeals for denovo decision. On the issues as remanded earlier by the order of this Tribunal in this case. Appeals disposed accordingly.

(Pronounced in Court on 31/3/2006)