IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 109 OF 2004

The Commissioner of Central Excise	**}**	
Mumbai-V, Mumbai	**}**	**Appellant**
versus		
M/s. Monitex Dye Prints	**}**	**Respondent**

Ms. Suchitra Kamble for the Appellant.

Mr. Prakash Shah with Mr. Jas Sanghavi i/b.
M/s. PDS Legal for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
SUNIL P. DESHMUKH, JJ.
DATED :- JANUARY 21, 2015

P.C. :-

This Appeal challenges the order passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) dated 27th April, 2004.

2) By that order, the Respondent/Assessee's Appeal No. E/3086/02-NB(A) has been allowed by the Tribunal. That Appeal challenged the order passed by the Commissioner of Central Excise (Appeals) dated 17th April, 2002.

3) Ms. Suchitra Kamble appearing for the Revenue, in support of this Appeal, submits that the substantial question of law is required

to be answered in favour of the Revenue and against the Assessee. She submits that the Respondent is liable to pay Central Excise duty at ad-valorem basis on the textile goods, namely, 6,47,801.45 lacs meters, which have been declared "loose" in RG-1 register (finished goods register) as on 16th December, 1998 at the time of removal of goods. She submits that if the register was of finished goods, there was no occasion for the Assessee to have entered this stock as "loose". The explanation given to the authorities was therefore in the nature of after thought. Once having noted this stock in this register, then, the same would have attracted the ad-valorem duty in terms of the changed effect to section 3A of the Central Excise Act, 1944.

4) She submits that if the Appellant is engaged in manufacture of excisable goods and by way of introduction of Compounded Levy Scheme on specific textile fabric as per the Notification dated 10th December, 1998, then, the Assessee is covered under Hot Air Stenter Independent Processors Annual Capacity Determination Rules, 1998 with effect from 16th December, 1998. Thus, the loose quantity of fabrics produced or manufactured prior to this date will be covered under the ad-valorem duty scheme. She invited our attention to the entries which have been made in the stock register and compiled as an Annexure to this paper book. She further submits that the show cause

notice specifically made these allegations and, when the matter was before the adjudicating authority, he found that in view of the change in the duty structure and applicable to the fabrics processed on or before 16th December, 1998, the stock position of finished goods, which have been held at about midnight on 15th December, 1998, has been verified and confirmed by the staff deployed for the purposes to de-marking clear stock attracting duty at old rate. Ms. Kamble submits that there is a finding of fact recorded by, both, by the adjudicating authority as well as the first appellate authority that the details concerning the issue have been verified. The RG-1 register is to be maintained by every manufacturer unless exempted. Once the stock is reflected in the statutory records, which only deals with accounting of finished goods, then, any finding of fact rendered by the Tribunal to the contrary is perverse. She relies upon this finding of fact rendered in the order of the adjudicating authority, namely, the Deputy Commissioner of Central Excise, Goregaon Division, Mumbai at internal pages 3 and 4, running pages 26 and 29 of the paper book. She submits that these findings have been confirmed by the appellate authority, namely, the Commissioner of Central Excise (Appeals), Mumbai-5. Therefore, they should not have been disturbed by the Tribunal and the Tribunal's reasoning in that behalf in para 3 of the impugned order is entirely erroneous. It is vitiated by an error of law apparent on the face of the record. Therefore, the impugned order deserves to be quashed and set aside.

5) Mr. Shah appearing for the Assessee, on the other hand, would submit that there are pure findings of fact rendered by the Tribunal. These findings of fact cannot be re-appreciated and re-apprised in our limited jurisdiction. Once the Tribunal has referred to the record and found that the outstanding stock of finished goods was declared by the Assessee to the satisfaction of the jurisdictional authority, then, the quantity declared alone was subjected to duty. The stock of manufactured goods was required to be accepted. The claim for duty in respect of the additional stock of 6,47,801.45 lacs meters in loose condition was not justified. That was not justified also because of the additional reason assigned in para 3 of the Tribunal's order, namely, that this stock was subsequently carried forward from 16th December, 1998 for further manufacture along with fresh issues. Mr. Shah therefore submits that the Appeal does not raise any substantial question of law and deserves to be dismissed.

6) With the assistance of the learned Counsel appearing for the parties, we have perused the memo of Appeal and the Annexures including the register extract compiled by the Revenue. The Tribunal was required to consider as to whether the Assessee is liable to pay

Central Excise duty at ad-valorem basis on textile goods of 6,47,801.45 lacs meters declared loose fabric in RG-1 register. That was stock which was declared as such in this register. However, the entry of 15th December, 1998 was scrutinised and verified by the jurisdictional superintendent. He has initialed and counter signed it. He has also mentioned date as 15th December, 1998. If the Revenue is relying upon the fact that this is a register of finished goods and the stock entered therein must be treated as such, then, we do not find any justification for the Revenue terming such huge stock of cloth as "loose". If it is kept in loose condition and not accounted for as finished goods or manufactured goods, then, the Revenue was obliged to produce material and to conclude that it was indeed in such status but not accounted for. Meaning thereby, the record to that extent ought to have been then proved as misleading and false. The Revenue itself was in doubt as to whether the new regime, which was applied from 16th December, 1998, could be invoked and applied in the given facts and circumstances. They were keen on subjecting this additional goods to ad-valorem duty. For that purpose, they were required to prove and establish that this was indeed a stock of finished goods and which has been accounted in the RG-1 register. However, the Tribunal rightly found that on one hand the Revenue relies upon the entries in this register and on the other hand, it terms the stock as loose. It is clear from the argument of the Assessee, which has been referred in the order of the Tribunal in para 2 that the declarations were accepted after due verification. Once the stock, as declared in the register, has been verified and accepted, then, the Revenue could not have subsequently argued to the contrary. The Revenue's insistence on terming the goods or the stock has not been found to be justified. The allegations of the Revenue in that behalf were held to be not established and proved. Beyond the stock register (RG-1) and entries therein, the Revenue was not able to establish as to how the Assessee's case that this was loose stock and maintained for further processing can be discarded. The Counsel for the Revenue was given enough opportunity to point out this, but, the Tribunal discovered that the record belies these assertions and contentions of the Revenue. The Assessee had declared the outstanding stock of finished goods to the jurisdictional authority on 15th December, 1998. The quantity was declared as 1,19,449.10 lacs meters. This quantity was verified by the officer on the same day. The same figure is rounded and certified as checked in the RG-1 register. If the stock of manufactured goods on 15th December, 1998 was determined as 1,19,449.10 lacs meters, then, the claim for duty in respect of additional stock of 6,47,801.45 lacs meters of fabric in loose condition was not held to be proved by the Revenue. The Tribunal assigned additional reasons, namely, the stock subsequently was carried forward from 16th December, 1998 for further manufacture along with fresh issues from Form IV register. In these circumstances, the Tribunal found that the duty determined by the Revenue was not sustainable. These were very crucial factors and based on undisputed record. They were clearly brushed aside and lost sight by the adjudicating authority while passing the order-in-original. They were also brushed aside by the Commissioner of Central Excise (Appeals). In such circumstances, when their findings of fact were termed perverse, the Tribunal, as the last fact finding authority, performed its duty in law and interfered with the orders, though concurrently rendered. Once they were interfered because they were found to be perverse and vitiated by error of law apparent on the face of the record, then, the impugned order of the Tribunal in that behalf does not raise any substantial question of law.

7) In view of the above discussion, the Appeal is dismissed. The question framed by this Court will have to be answered in favour of the Assessee and against the Revenue. No costs.

(SUNIL P. DESHMUKH, J.) **(S.C.DHARMADHIKARI, J.)**