IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH : NAGPUR

Writ Petition No. 4006/2013

(The Commissioner of Central Excise, Nagpur vs. M/s Indorama Textiles Ltd., Nagpur & anr.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Shri S.N. Bhattad, Advocate with Shri K.K. Nalamwar, Advocate for appellant. Shri Gajendra Jain with Ms. Anjali Hiravat, Advocates for respondents.

CORAM : M.S. SANKLECHA & MANISH PITALE, JJ.

DATE : 23.6.2017.

This petition under Articles 226 and 227 of the Constitution of India challenges the order dated 6th June, 2013 passed by the Joint Secretary to the Government of India, New Delhi in Revision under Section 35EE of the Central Excise Act, 1944 (the Act). The impugned order dated 6th June, 2013 allowed the respondent – assessee's application for benefit of duty draw back under Notification dated 68/2007 dated 16th July, 2007.

2. The respondent – assessee is engaged in the manufacture of Synthetic Filament Yarn and Synthetics Staple Fibre (final products) falling under Chapter Heading 5402 and 5503 of the First Schedule to the Central Excise Tariff Act 1985 respectively.

The respondent-assessee is inter-alia exporting its final products under the Duty Drawback Scheme in terms of Notification issued by the Central Government and Customs, Central Excise and Service Tax Drawback Rules, 1995. At the relevant time, the rate of the drawback duty was dependent upon the fact whether the Cenvat Credit is claimed or not.

3. During the period between January 2008 to March 2008, the petitioner had exported its final products under various Shipping Bills claiming duty drawback. The respondent-assessee had before claiming drawback, reversed the credit taken on inputs and services while claiming drawback @ 16% of the FOB value on their exports. The petitioner-Revenue on 25.10.2010 granted the respondent – assesee duty drawback of Rs. 19.36 crores i.e. @ 16% of FOB as claimed.

4. Subsequently, the petitioner noted that the respondents – assessees had availed Cenvat credit of service tax paid on input services. Thus, it was the petitioner's contention that the respondent – Assessee was entitled to duty drawback only at 3% of FOB value instead of 16% of FOB value as originally claimed and sanctioned. Thus, a show cause notice was issued seeking to recover the excess rebate of duty granted. Thereafter, it was adjudicated upon by the petitioner holding that the respondent – assessee was eligible to the lower rate of drawback only @ 3% of FOB value and not @16% of FOB

value as erroneously granted. Thus, confirmed the recovery of excess refund of Rs. 15.75 lakhs along with interest.

5. On appeal, the Commissioner (Appeal) by order dated 28th March, 2011 rejected the respondent-assessee's appeal. Thus, the order dated 25th October, 2010 of the Assessing Officer was upheld.

6. Being aggrieved, the respondent-assessee filed Revision to Government of India. By the impugned order dated 6th June, 2013, the respondent – Assessee's appeal was allowed. Thus, respondent – assessee's claim for duty drawback on 16% under the Duty Drawback Rules in respect of exports made during the period January to March 2008 was restored at Rs. 19.36 crores. The impugned order negatived the petitioner's contention that the respondents are entitled to duty drawback @ 3% instead of 16% as claimed by the respondents.

7. The grievance of the petitioner – Revenue is that the respondent had availed Cenvat Credit paid on input services during the period, the final product were exported under Duty Drawback Rules. It is submitted that in terms of Notification No. 68/2007, the respondent-assessee is entitled to duty drawback of at 3% of the FOB value as it had availed Cenvat Credit facility in respect of input services.

8. We find that this very grievance was urged by the petitioner

- Revenue before the Tribunal. However, the impugned order noted that the respondent had reversed the Cenvat Credit taken as services in respect of finished products during January to March 2008. To arrive at the above conclusion the impugned order placed reliance on the decision of the Hon'ble Apex Court in ***Chandrapur Magnet Wires (P) Ltd vs. Collector of C.Excise, Nagpur 1996(81) E.L.T. (S.C.)***, ***Hello Minerals Water (P) Ltd. Vs UOI 2004 (174) ELT 422 (All.)*** and ***CCE vs Bombay Dyeing & Manufacturing Co.Ltd. 2007(215) ELT 3 (SC)***. We also note that the Alahabad High Court in *Hello Minerals Water (P) Ltd.* (supra) while following the decision of the Apex Court in *Chandrapur Magnet Wires (P) Ltd (supra)* had taken a view that where the exemption is subject to non-availment of Modvat Credit on inputs, then such exemption would be available even in a case where the credit taken on inputs has been reversed, even after clearance of goods. The aforesaid decision of the Allahabad High Court has been accepted by the revenue as reflected in the order of the Hon'ble Apex Court in CCE vs. Precot Meridian Ltd. 215 (325) ELT 234 (SC). In the above case, it has been recorded that on specific query by the Court being put to the revenue, viz. whether the decision of Alahabad High Court in the *Hello Minerals Water (P) Ltd.* (supra) has been accepted or not. The counsel appearing for the petitioner - Revenue informed the Court that the decision has been accepted and no appeal has been filed against it by the Revenue. Thus, the impugned order applied the above decision to hold that the respondent-Assessee is entitled to the benefit of duty drawback of 16% of FOB value.

9. In view of the above, the impugned order in the facts of this case does not call for interference. Accordingly, the petition is dismissed. No order as to costs.

(MANISH PITALE, J.) **(M.S.SANKLECHA, J.)**

Gohane