IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 30.10.2017
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.Nos.3048 and 3049 of 2017
C.M.P.No.18505 of 2017

Commissioner of Central Excise,
O/o. the Commissioner of Central
Excise, Customs and Service Tax,
Coimbatore. ... Appellant in both appeals /Respondent

vs.

M/s.Saradha Terry Products Ltd.,
Batthrakaliamman Koil Road,
Mettupalayam,
Coimbatore 641 305.
... Respondent in both appeals/Appellant

Both Civil Miscellaneous Appeals are filed under Section 35G of the Central Excise Act, 1944, against the common order, dated 02.12.2014, made in Final Order Nos.40878 and 40879 of 2014.

For Appellant in both CMP's : Mr.A.P.Srinivas

For Respondent in both CMA's : Mr.D.Naveena

COMMON JUDGMENT
(Judgment of the Court was delivered by S.MANIKUMAR, J)

Challenge in the Appeals is to an order, made in Final Order Nos.40878 and 40879 of 2014, dated 02.12.2014, by which, CESTAT, Chennai, partly allowed the appeal filed by the respondent, by modifying the adjudication order.

2. Short facts leading to filing of the appeals that M/s.Saradha Terry Products Limited (STPL), responent herein, is engaged in the manufacture of Terry Towels, falling under Chapter 63 of the Central Excise Tariff Act, 1985. On the basis of intelligence gathered that M/s.STPL, was evading Central Excise duty and Customs duty, by wrongly availing the benefit of

Notifications No.1/1995-CE, dated 04.01.1995; No.8/97-CE, dated 01.03.1997; No.15/2002-CE, dated 1.3.2002; and No.53/97-Cus, dated 3.6.1997, officers of DGCEI Regional Unit, Coimbatore, visited M/s.STPL, on 8.10.2003 and verified the books of accounts and records maintained by them. Upon verification of the same, it was found as follows:

(a) It was noticed that the unit had availed benefit of notification No.8/1997-CE, dated 01.03.1997, for most of their sales to DTA, without maintenance of records as to the inputs are used in their end products cleared to DTA.

(b) Wrong availment of Notification No.15/2002-CE, dated 1.3.2002,

(c) Perusal of Yarn utilization records indicated that they have were getting yarn without payment of Central Excise Duty, in terms of Notification No.1/95-CE, dated 4.1.1995 and over a period of time the ratio of yarn to fabric have been increasing without any change in the manufacturing process of without any change in the machines used for manufacture of terry towels/home furnishings,

(d) Perusal of the Unit's documents by the Officers indicated that STPL are also having branches in the same name, namely Unit-II, Unit-III, Unit-IV etc., which were functioning under the same management, who indulge in purchase of raw cotton, both imported and indigenous and also convert the said raw cotton into yarn and sell the same in the market.

3. During investigation, statements were recorded from Authorized Signatory of STPL, under Section 14 of Central Excise Act, 1944 and Section 108 of Customs Act, 1962 and it was found that the M/s.STPL have evaded payment of excise duty and customs, by indulging the following irregularities:-

(i) Wrong availment of Notification No.8/97-CE, dated 01.03.97 for the reason that M/s.STPL has not maintained separate set of records for manufacture of terry towels, using imported materials and using 100% indigenous materials;

(ii) Wrong availment of Notification 15/2002-CE, dated 01.03.2002 for the reason that M/s.STPL has not satisfied the condition stipulated therein, that the inputs should have been procured on payment of duty;

(iii) Wrong availment of Notification 1/95-CE, dated 04.01.95, in respect of the quantity of inputs, procured without payment of duty against CT-3 Certificate, accounted for as wastage, in excess of the input output norms prescribed under SION; and

(iv) M/s.STPL did not account properly the imported raw cotton received without payment of duty in violation of condition to the Notification specified under Notification No.53/97-Cus., dated 10.06.1997.

4. In this regard, a Show Cause Notice No.20/2005, dated 03.05.2005 was issued to M/s.STPL, proposing to demand Central Excise duty of Rs.56,05,439/- and Customs duty of Rs.7,60,806/-, by invoking the extended period. Further, the notice proposed to demand interest and impose penalty, under the relevant Sections of the Central Excise law. After due process of law, the Commissioner of Central Excise, Coimbatore, vide Order-in-Original No.01/2006, dated 09.01.2006, has passed the following orders,

"I confirm and demand Central Excise duty, amounting to Rs.56,05,439/- (Rupees fifty six lakhs five thousand four hundred and thirty-nine only), during the period from 01.04.2000 to 31.03.2003, involved on the charges under sub-Section (2) of Section 11A of the Central Excise Act, 1944.

I also impose a penalty of Rs.48,11,359/- (Rupees forty eight lakhs elevan thousand three hundred and fifty nine only) under Section 11 AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 and under Rules 173Q of the erstwhile Central Excise Rules, 1944, Rule 25 of the erstwhile Central Excise (No.2) Rules, 2001 read with Section 38A of Central Excise Act, 1944, after appropriating the excise duty of Rs.7,94,080/- paid already by 'STPL' vide TR-6 challan Nos.016/2003-04 on 15.10.2003 and 24/2003-04, dated 16.03.2004 for Rs.68,200/- and Rs.7,25,780/- towards Central Excise duty liability confirmed above.

I also demand appropriate interest under Section 11AB of the Central Excise Act, 1944.

I also impose a penalty of Rs.1,00,000/- (Rupees one Lakh only) on Mr.K.Jeyaraj, under Rule 209A of the Central Excise Rules, 1944 (erstwhile), Rule 26 of the Central Excise (No.2) Rules, 2001 (erstwhile) read with Rule 26 of the Central Excise Rules, 2002 and Section 38A of Central Excise Act, 1944.

I drop the proceedings with respect to demand of Rs.7,60,806/- (Rupees seven lakhs sixty thousand eight hundred and six only) mentioned in Para 16(f) of the show cause notice F.No.INV IDGCEI/CHZU/71/2003 (SCN No.20/2005, dated 03.05.2005)."

5. Aggrieved by the Order-in-Original passed by the Commissioner of Central Excise, Coimbatore, M/s.STPL, Coimbatore

and Mr.K.Jeyaraj, General Manager-Finance & Company Secretary of the Company, have filed appeals in E/293-294/2006, before the CESTAT, Chennai. Submissions made on behalf of the appellants therein, are extracted hereunder:

> "2. In respect of the wrong availment of exemption under Notification No. 8/97-CE dated 01.03.1997, they have admitted and paid the duty liability of Rs. 6,84,805/- even before the issue of Show Cause Notice. They are contesting only the demand of interest under Section 11 AB of the CEA, 1944. Since they paid the duty before the issue of show cause notice, the interest is not liable to be paid. He relied upon the following decisions in support of his contention:
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> (i) Karnataka Soaps & Detergents Ltd. Vs. CCE, Bang. [2005 (190) ELT 103 (Tri.-Bang.)],
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> (ii) Jindal Vijayanagar Steel Ltd. Vs. CC, Mangalore [2004 (177) ELT 937 (Tri.-Bang.)],
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> (iii) Ashok Leyland Ltd. Vs. CCE, Chennai [2003 (156) ELT 995 (Tri.-Chen.)]
>
> 3. Regarding the second issue of wrong availment of Notification No. 15/2002-CE dated 01.03.2002, the appellants have duly intimated the department on the availment of notification and indicated the Notification No. 15/2002-CE dated 01.03.2002 in all the invoices. The department should have denied the exemption at the time of submission of invoices. Therefore, there is no suppression of facts. He also submits that they have already paid an amount of Rs. 68.300/- out of the total demand. There is no intention to evade payment of duty and the department was aware of the facts of this issue and hence there is no justification for invoking the extended period of limitation. Reliance has been made on the Apex Court judgment in the case of M/s. Pahwa Chemicals Private Ltd. - 2005 (189) ELT 257.
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> 4. Regarding the demand made on non-utilization of yarn received under CT3 in the manufacture of terry towel during the period from 01.04.2000 to 31.03.2003, in violation of input-output norms, he submits that the appellants have not violated input-output norms in the manufacture of final products "Terry Towel". The department demanded duty purely based on the input-output norms is not sustainable. He also submits that they have properly accounted the receipt of raw materials under CT3/Annexure. There is no allegation by the department that they have diverted the yarn to DTA

units equivalent to the wastage quantity over and above the norms fixed under SION.

5. The department has not taken into account the facts that they were manufacturing Terry Towel by using PVA fibre (known as 'Water Soluble Fibres') in the ratio of 85:15 and calculated the norms as provided in SION for the manufacture of "100% Cotton Terry Towels". There is no norms prescribed in SIOM for Terry Towels manufactured by using PVA. The PVA fibre is blended with cotton yarn in the above ratio to form the modal yarn and manufacture Terry Towels. The PVA fibre used is soluble in water and dissolves completely at a temperature of 85 deg C. If the weight of PVA is deducted the total wastage is well within the SION. He relied upon the Board's Circular F.No. 305/117/85-FTT dated 29.12.1986. As per the above circular, in respect of 100% EOUs, where the waste/scrape quantity exceeds 25% demand of duty could be made. Appellants have maintained details of all production and clearance of the finished goods, which were submitted to the department and also they have filed the returns regularly. Appellants have duly fulfilled the export obligation of finished goods and also cleared to DTA on payment of appropriate duty. There is no suppression of facts or intention to evade payment of duty. Therefore, the demand is barred by limitation. The extended period cannot be invoked because, there is no finding on clandestine removal of fabrics or finished goods. He relied upon the following judgments in support of his contention.

(i) Ahimsa Mines and Minerals Ltd. Vs. CCE, Jaipur [2012 (283) ELT 141 (Tri.-Del.)]"

6. On the other hand, before the Tribunal, the Department has made following submissions,

"6. On the other hand, the Revenue has reiterated the findings of the adjudicating authority and submits that regarding wrong availment of exemption Notification No. 8/97, the interest is mandatory and rightly demanded. Payment of duty before the issue of show cause notice cannot be a reason for not demanding the interest. Once, duty is payable, interest becomes mandatory. He relied upon the following decision in the case of Alembic Ltd. Vs. CCE, Vadodara - 2013 (295) ELT 535 (Tri.-LB), in support of his argument.

7. Regarding the second allegation in respect of wrong availment of Notification No. 15/2002, since the appellants have admitted the demand and also paid

the duty, they are liable to pay the interest and liable for penalty. He relied upon the decision in the case of Paras Fab International Vs. CCE,Jaipur - 2009 (239) ELT 176 (Tri.-Del.) in this regard.

8. Regarding the major demand relating to violation of input-output norms, he submits that since 100% EOUs are governed under import-export policy and they are duly covered by the standard input-output norms. Notification No. 1/1995 dated 04.01.2005 permits the EOUs to procure raw materials, components, capital goods, etc., duty free in connection with the manufacture of the finished products, for the purposes specified in the notification and the appellants were not maintained proper account on consumption of raw materials. The adjudicating authority has correctly worked out the input-output norms prescribed for the manufacture of 100% cotton terry towels. Therefore, they have shown the inflated wastage of 25 to 28%. They have failed to produce any corroborative evidence for higher wastage. He also submits that invocation of extended period is justified as the department has detected only after the investigation. He relied upon the following decision in the case of M/s. Kalvert Foods India Pvt. Ltd. (SC) - 2011 (270) ELT 643."

7. On the above submissions, CESTAT, Chennai, has considered, certain notifications and Board's Circular, dated 29.12.1986, as follows:

"9. We have carefully considered the submissions by both the sides and also perused the records. Out of the three issues covered in the impugned order, we find that in respect of wrong availment of Notification No. 8/1997-CE dated 01.03.1997 and Notification No. 15/2012-CE dated 01.03.2012, the appellants admitted the duty liability before the adjudicating authority and paid the duty before issue of show cause notice. They only contended the demand of interest in both the issues and penalty in respect of Notification No. 15/2012. The appellants are liable to pay the interest on demand confirmed and already paid by them on both the issues. However, the penalty imposed on the demand of Rs. 70,204/- is liable to be set aside, as there is no suppression of facts.

10. The appellants mainly disputed the demand in respect of 3rd issue, of alleged violation of standard input-output norms (SION). On perusal of the records and findings of the adjudicating authority, we find that the demand has been confirmed on the grounds that the appellants have violated the input-output norms (SION) prescribed under the Import-Export Policy and

confirmed the demand. For better understanding, para 5.4 and para 5.5 of the impugned order is reproduced as under:-

"5.4. For all duty exemption schemes the input-output norms applicable have been published in the import-export policy, Volume 2 including textile products. The textile products are figuring in page 857 of input-output norms applicable for the period A M97-2002 and in page 968 of input-output norms applicable for the period A M2002-2007. Serial number J136 deals with export item 100% cotton terry towel bleached/dyed. For one kg. of export product, the items allowed to be imported are:

1. 100% cotton/combed yarn 1.1 kg.
2. Hydrogen Peroxide 0.02 kg.
3. softening agent 0.01 kg
4. reactive or direct or vat or sulphur dyes of 100% strength 0.015 kg.
5. optical whitening agent of 100% strength 0.005 kg (items-iii) and
6. will be allowed only against export of dyed terry towel.

Since the norms have already been fixed for cotton terry towels as per the import-export policy applicable to duty exemption scheme, it appeared that the said norms are applicable to EOU also. There is no change in the norms as per the Policy for the year AM 2002-2007.

5.5. In the case of STPL, the usage of cotton yarn in relation to their end products, namely, cotton terry towels appeared to increase year after year showing increase in the usage of cotton yarn for the manufacture of same unit of terry towel, as could be seen from consumption pattern shown in their books of accounts for the period from 1999 to 2003, which is furnished below:-

S.No.	Year	Actual consumption of yarn (in Kgs.)	Towel Prodn.	% of Prodn. compared to consumption of Yarn
1	1999-00	821577	764024	92.99
2	2000-01	907866	770011	84.81
3	2001-02	1201659	869086	72.32
4	2002-03	1573180	1128458	71.73

As seen from the above, the percentage of production of Cotton Terry Towel decreased from 92.99% to 71.73% from 1999-2000 to 2002-03. The appellant's contention that in order to meet the higher quality of Terry

Towels, as per the export market demand, they started using model yarn comprising of Cotton yarn and PVA at the ratio of 85:15 from April, 2001 onwards.

We find that the Test Report dated 21.03.2006 issued by the South India Textile Research Association (SITRA) as relied by the appellants, confirms PVA fibre gets dissolved at 85%C. This fact has not been disputed by the department. It is seen that the Cotton yarn is blended with PVA before weaving Terry Towels, which is carried out through job work. After weaving, Terry Towels are dyed and bleached and during the process the PAV fibre blended with such cotton yarn gets dissolved. It is also seen from the records that the appellants have obtained permission from the department for movement of inputs for job work for conversion of yarns. Therefore, while dyeing and bleaching the terry towels, the weight of the finished products gets reduced to the extent of PVA content, which is dissolved in the water. If the above fact has taken into account, the wastage gets reduced to below 25%.

11. It is relevant to see the Board's Circular dated 29.12.1986, clarifying the percentage of waste/scrap by 100% EOUs, which is reproduced below:-

"The undersigned is directed to say that the question of fixation of percentage of disposal of waste/scrap generated during the manufacture of goods by 100% Export Oriented Undertakings has been examined by the Board of Approvals for 100% EOUs. It has now been decided that the percentage of scrap or waste material shall be either as per the norms in Annexure-V to Appendix-19 of the Import-Export Policy, 1985-86, subject to a maximum of 25%. In case the quantity of waste/scrap exceeds 25% an amount equal to the duty leviable on mother material, out of which the scrap or waste has arisen, shall be charged on the excess quantity of scrap/waste under the proviso to Section 3 of the Central Excise & Salt Act, 1944."

The Board has specified that the percentage of waste material shall be either as per the norms of SION, subject to maximum of 25%. The Board has clearly spelt out that if the waste exceeds 25% an amount equal to the duty leviable on the raw material on the excess quantity of waste. If the PVA content is excluded from the final product as it gets dissolved the consumption and production of terry towel as worked out by the appellant, is as under:-

S.No.	Year	Actual consumption of yarn (in Kgs.)	Towel Prodn.	% of Prodn. compared to consumption of Yarn
1	2000-01	817025	770011	94.24%
2	2001-02	1019622	869086	85.24%
3	2002-03	1397431	1128459	80.75%

8. Considering the materials on record, CESTAT, Chennai, has passed the following orders,

"12. From the above, it is evident that if the weight of PVA is excluded from the total weight of finished product, the wastage is reduced to less than 25%. We also find that the department has not adduced any findings for removal of excess yarn or excess clearance of yarn or finished goods without payment of duty. We find that the Tribunal in the case of M/s. Maruti Cottex Ltd. Vs. CCE - 2006 (199) ELT 263 (Tri.-Bang.), held that the PVA is a consumable and gets washed off during the process. In the present case entire demand has been made out purely by adopting input-output norms prescribed by SION which is related to 100% Cotton Terry Towels (bleached/dyed), where the PVA has not been included in the norms. The department accepted the fact that the appellants have used PVA in the manufacture of Terry Towel. We are of the considered view that without producing adequate evidence on the excess utilization of cotton yarn or diversion of yarn, the duty cannot be demanded purely on the input-output norms without any corroborative evidence. We also find that the Board#s circular referred above clearly supports that the appellants being 100% EOU, they are allowed wastage upto 25% and in the present case the percentage of waste is well below the prescribed limit after excluding PVA content. Therefore, we hold that the demand of Rs. 48,50,530/- confirmed by the adjudicating authority is set aside. Consequently, the penalty imposed on the appellants and Mr. K. Jayaraj is also liable to be set aside.

13. Accordingly, the impugned order is modified as under:

Issue-1:

i) Demand of Rs. 6,84,805/- and interest in the impugned order is upheld.

Issue-2:

ii) Demand of Rs. 70,204/- and interest upheld and penalty is set aside.

Issue-3:

iii) Demand of Rs. 48,50,520/-, interest and penalty is set aside.

iv) Penalty imposed on K. Jayaraj is set aside and the appeal allowed.

Appeals filed by the M/s. Saradha Terry Products Ltd., is partly allowed. The appeal filed by Shri K. Jayaraj is allowed."

9. Being aggrieved by the order passed by the CESTAT, Chennai, the present appeal has been filed, on the following substantial questions of law,

"(1) Whether the Tribunal was correct in setting aside the penalty imposed by the Adjudicating Authority for the wrong availment of Notification No.15/2002-CE dated 01.03.2002 on the ground that the extended period of limitation is not applicable when the facts have come out clear on record that the conditions of the notification were not fulfilled and also the ineligibility to its availment was bought out only after investigation by the Department?

2. Whether the Tribunal was correct in setting aside the penalty under Section 11AC imposed by the Adjudicating Authority for the wrong availment of Notification No. 15/2002-CE dated 01.03.2002 on the face of the fact that the demand has been upheld by the Tribunal by invoking the extended period of limitation?

3. Whether the Tribunal is correct in setting aside the order of the Adjudicating Authority in respect of the demand of duty to the tune of Rs.48,50,520/-, interest and penalty with regard to non-utilisation of yam received without payment of duty under CT-3 Certificate in the manufacture of Terry Towel during the period from 1.4.2000 to 31.3.2003, where the applicability of the Board's Circular F.No.30S1 1171 8S-FIT dated 29.12.1986 does not arise in view of the facts of the present case?

(4) Whether CESTAT is correct in setting aside the penalty of Rs.1,00,000/- on Shri.K.Jeyaraj under Rule 209A of the erstwhile Central Excise Rules, 1944, Rule 26 of the Rule 25 of the erstwhile Central Excise (No.2) Rules, 2001 read with Section 38A of Central Excise Act, 1944?

10. In support of the above substantial questions of law, the appellant has raised following grounds,

"a) The Tribunal has erroneously held that M/s.STPL have not suppressed the facts regarding the wrong availment of Notification No.15/2002-CE dated

01.03.2002 on the ground that they have duly intimated the Department on the availment of the above Notification in all the invoices and as such there is no intention to evade payment of duty and the department was aware of the facts of the issue, there is no justification for invoking the extended period of limitation.

a(i) CESTAT has not considered the well settled legal position that in order to claim benefit of notification the party must strictly comply the term of the notification as the onus is on the party to prove the eligibility or otherwise to the conditions of the notification and thus avail the exemption. The exemption under Notification 15/2002 is a conditional one which specifies that in respect of textile fabrics, the said exemption is applicable only the inputs are duty paid. M/ s. STPL is functioning under EOU Scheme and are fully aware that all the inputs used in the manufacture of Terry Towels are not duty paid and as such they do not fulfill the conditions laid in the notification and hence, are not eligible for the benefit of notification. With the introduction of self removal procedure and self-assessment of excise duty, a higher responsibility has been cast on the assessee to comply with all the requirements prescribed under the statute. The department cannot nor are they expected to find out on their own in all cases what each assessee is doing and whether discharging the correct duty liability. It is a settled law that the party claiming benefit under any notification should prove his eligibility to claim any benefit under the notification. In the case of M/s.Fitpack Textile Mills Ltd. Vs. Collector of Central Excise, Jaipur -I 2001(130)ELT 759 (Tri.Del.) it was held that the burden of proof of satisfaction of conditions of notification lies on person seeking benefit. Also, the Hon'ble Supreme Court in the case of Mangalore Chemicals & Fertilizers Ltd. Vs. Deputy Commissioner 1991(55)ELT 437(SC) observed that a person who claims an exemption has to establish his case. Here, short payment of duty has come to light only after collection of reasonable evidence on investigation and the adjudicating authority has correctly held that the conditions of the notification were not fulfilled and thus they liable to pay duty for improper availment of notification. In such cases, the extension of period of time invoking suppression and imposition of penalty under Section 11AC is just and legally correct. In this case, it has come out very clearly that all the facts were not available to the department and things have come to light only after extensive investigation. As such, the ratio of the ruling rendered in the case of M/s.Pahwa Chemicals Pvt.Ltd., - 2005 (189) ELT 257 will not apply to the facts of the case.

a(ii) The Hon'ble Supreme Court in the case of Union of India v. Dharmendra Textile Processors and other enjoined matters 2008 (231) E.L.T. 3 (S.C.) by its pronouncement of the rule has laid the question of applicability of equal penalty under Section 11AC of the Central Excise Act, 1944 at rest. It has categorically opined that the penalty prescribed in Section 11AC is mandatory in nature and it is a civil liability. Further, Hon'ble Supreme Court in the case of U.O.I.., v. Rajasthan Spinning & Weaving Mills and Commissioner of Customs & Central Excise v. Lanco Industries Ltd. in Civil Appeal No. 3525 of 2009 arising out of S.L.P. (Civil) No. 4078 of 2008 wherein it has been clarified that when the conditions spelled out under Section 11AC of the Central Excise Act, 1944 are fulfilled, there is no discretion to reduce the mandatory penalty equal to duty even though the duty is paid before the issue of Show Cause Notice. Therefore, imposition of mandatory penalty is warranted as per Section 11AC especially when demand of duty and interest has been upheld by the Hon'ble Tribunal. Hence, the decision of CESTAT to waive penalty in respect of the wrong availment of notification 15/2002-CE dated 01.03.2002 is not legally correct.

b) The CESTAT set aside the demand made for the non-utilization of Yarn received under CT3 in the manufacture of Terry Towels during the period 01.04.2000 to 31.03.2003 in violation of input output norms which are required to be adhered in terms of Notification No.1/95 dated 04.01.1995 based on the incorrect reading of Circular F.No.305/117/85-FTT dated 29.12.1986. This Circular deals with the question of fixation of percentage of disposal of waste generated during the course of manufacture of goods by 100% EOU. This Circular does not deal with the quantum of waste that may arise during the course of manufacture. Therefore, the decision of Tribunal to extend the quantum of wastage upto 25% of the raw material is not correct and legally sustainable.

b(i) The CESTAT has erred in applying Board's Circular dated 29.12.1986 to the waste and scrap generated by STPL in the course of manufacture of Terry Towels. The Board has specified the percentage of waste material shall be either be as per the norms of SION subject to the maximum of 25%. In case the quantity of the waste/scrap exceeds 25%, an amount equal to the duty be leviable on Mother material out of which the scrap has arisen shall be charged on the excess quantity of the scrap/waste under the proviso to Section 3 of Central Excise Act, 1944. Assuming but not admitting the applicability of the Board's Circular to the facts of case, the waste percentage has to be calculated on the Mother material viz., on the Cotton Fibre procured without payment of duty. The waste viz. Hard waste, Soft Waste generated has already exceeded the Norm 25% prior to the yarn stage itself as admitted by Shri R. Swaminathan, General Manager of M/s.Karthik Mills, the job worker for M/s. STPL. Making further allowance of 15% on account of PVA (washable material) is not envisaged under the Board's Circular and therefore, the CESTAT has erred in holding that the waste generated is well within the limit set under the Board's circular dated 29.12.1986 which is not sustainable as per law and liable to be set aside.

b(ii) The Board's Circular dated 29.12.1986 places an overall cap of 25% on the disposal waste / scrap generated during the manufacture of goods by 100% EGUs. In cases where the percentage of waste / scrap fixed in SIGN exceeds 25%, the waste/scrap will be limited to 25% as per the provisions of the above Circular. In cases where the waste / scrap is less than 25%, the provisions of Board's Circular will have no application and the percentage fixed in SIGN will prevail. In the instant case, the waste / scrap is 9.09% by SIGN from the Yarn stage to the Towel stage which is well within the overall cap of 25% fixed by the Board's Circular and therefore, extending the benefit of 25% from the Yarn stage to Towel stage is against the provisions of the said Circular. The Tribunal decision without appreciating the above factual and legal position is liable to be set aside as it is not correct as per Law.

b (iii) The standard input output norm under the import export poicy has been prescribed to prevent the possibility of clandestine removal of goods by showing fictitious high wastage. The input output norm has been correctly applied from the Yarn stage in assessing the consumption materials and the resultant production while demanding on the excess Cotton Yarn. When there is no change in the manufacturing process and machineries used in production, there cannot be an increase in the consumption pattern of yarn over a period of time. The conclusion of the Adjudicating Authority in arriving at the decision that the production records maintained by STPL is manipulated one and the duty on the yarn shown to have been used in excess of the input output norms is rightly demandable is correct and legal and the consequent penalty imposition is correct. The finding given by the Tribunal to the contrary is not sustainable as per law."

11. We have heard the submissions of the learned counsel appearing for the parties and gone through the material on record and find that the Revenue has substantiated substantial question of law No.2 and the same is answered in favour of the revenue.

12. In respect of penalty of Rs.1,904/-, the same has not been paid. Therefore, we hold that a sum of Rs.1,904/- has to be paid, within a period of two weeks, from the date of receipt of a copy of this order. Other substantial questions of law are answered against the revenue.

13. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

skm

To

1.The Customs Excise and service Tax
Appellate Tribunal,
South zonal Bench at Chennai.

2.The Commissioner of Central excise,
O/o.The Commissioner of Central Excise,
Customs & Service Tax,
6/7, A.T.D. Street, Race Course Road,
Coimbatore.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.77237
+2cc to Mr.S.Durairaj, Advocate SR.No.76638, 76639

C.M.A.Nos.3048 and 3049 of 2017

SR(CO)
GN(01/03/2018)