



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

203

GCR-4-2006 (O&M)

Date of Decision: 01.12.2025

M/S ANSHUPATI TEXTILE

...Petitioner

Vs.

THE CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

...Respondents

**CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL
HON'BLE MS. JUSTICE MANDEEP PANNU**

Present:- Mr. Sarjit Bhadu, Sr. Advocate (*Through V.C.*) with
Ms. Sanya Thakur, Advocate for the petitioner

Mr. Sourabh Goel, Advocate with
Ms. Deify Jindal, Advocate for respondent

JAGMOHAN BANSAL, J. (ORAL)

1. This is reference received from Customs, Excise and Service Tax Appellate Tribunal (for short 'Tribunal'). The reference was forwarded by Tribunal pursuant to order dated 21.11.2005 passed by this Court in CEC No.18 of 2004. The reference forwarded by Tribunal reads as:-

"In pursuance to the order dated 22.11.2005 passed by the Hon'ble Punjab and Haryana High Court. The statement of the case is drawn as under:

2. *M/s Anshupati Textiles are engaged in the manufacture of Acrylic and Acrylic Blended Yarn. The assessee is manufacturing Single Ply Yarn which is captively consumed by the assessee in the manufacture of double multifolded yarn. The assessee was paying duty on the total quantity of Single yarn. On 20.11.96 the Officers of the Revenue Department visited the assessee's premises and there was certain discrepancies in the stock. It was also found that the duty liability in respect of the Single yarn was discharged at spindle stage. The duty paid yarn was kept in the factory for carrying of activity of*

doubling and multi-folding yarn. A show cause notice was issued to the assessee alledging that they had removed the excisable goods without payment of duty and demand of Rs. 18,86,089.97 was raised. The Adjudicating authority confirmed the demand and imposed the penalty. The appellants filed appeal and Commissioner (Appeals) dismissed the appeal. The assessee filed appeal before the Tribunal and the Tribunal vide Order dated 07.4.2003 dismissed the appeal. The Tribunal held that shortage of Single yarn detected at the time of physical verification of stock was due to clandestine removal of the same without payment of duty. The Tribunal rejected the contention of the assessee that there was no shortage of yarn and short pointed out by the Revenue officers at the time of verification was due to non-deduction of wastage generated during the manufacture of double yarn from the single yarn. From the facts of the case, we find that following question of law is arising for the valuable opinion of the Hon'ble High Court:

"(a) Whether on the facts and in the circumstances of the case, there was any material before the Tribunal to support the finding that 68.996MT of single yarn had been clandestinely removed by the assessee without payment of excise duty.

(b) If the answer to the question is in the affirmative, whether the assessee was still liable to pay excise duty on the afore-mentioned quantity of the single yarn?"

2. The petitioner is engaged in the manufacture of man-made yarn. It is manufacturing single ply yarn which is captively consumed to manufacture double ply yarn. During the period in question, central excise duty was not payable on double yarn whereas central excise duty was payable

on single ply yarn. The petitioner as per instructions of the department was supposed to pay duty on off spindle stage. The preventive staff of respondent on 20.11.1996 searched factory premises of the petitioner. Physical verification of stock was carried out and shortage of 68.996 MT yarn at single ply yarn stage was found. The respondent issued show cause notice raising demand of duty on the alleged shortage of single ply yarn. The Adjudicating Authority vide order dated 12.02.1998 confirmed demand as well as imposed penalty upon the petitioner. The petitioner preferred appeal before Commissioner (Appeals) who upheld order of Adjudicating Authority. The petitioner further preferred appeal before Tribunal which remanded the matter back to Adjudicating Authority. The Adjudicating Authority again confirmed the demand along with penalty. The petitioner again preferred appeal before Commissioner (Appeals) which came to be dismissed. The petitioner again preferred appeal before Tribunal which came to be dismissed vide order dated 07.04.2003. The Tribunal confirmed findings of the authorities below with respect to alleged shortage at single ply yarn stage. The petitioner preferred reference petition before this Court. This Court vide order dated 22.11.2005 directed the Tribunal to refer afore-stated questions to this Court. The Tribunal in compliance of orders of this Court has made afore-stated reference.

3. Learned Sr. Counsel for the petitioner submits that there was no shortage of finished goods at the time of search conducted by preventive staff. The authorities did not appreciate evidence in true spirit. The invoices of yarn placed on record make it clear that every single kg yarn was duly recorded. There was no clandestine removal of goods.

4. Learned counsel for the respondent reiterated findings of authorities as well as Tribunal.

5. We have heard learned counsel for the parties and perused the record with their able assistance.

6. From the perusal of record, it is evident that matter was twice examined by Adjudicating Authority, Appellate Authority and thereafter Tribunal. All the authorities have concluded that there was shortage at the stage of single ply yarn. Relevant extracts of order dated 07.04.2003 are reproduced as below:-

“4. We have heard both sides and gone through the record. From the record we find that the appellants were clearing single yarn on payment of duty against invoices issued under Rule 52-A of the Central Excise Rules and the invoices so issued showed the weight of single yarn cleared. The quantity reduced from the RG-I balance against each invoice was the same as recorded in that invoice. The balance in the RG-I was arrived at after deducting the quantity of single yarn removed on payment of duty for manufacturing doubled yarn. Therefore, it is difficult to accept as pleaded by the appellants that the shortage of single yarn weighing 68.996 MT was not shortage in reality, but it was due to the non-accountal of the wastage resulting from conversion of single yarn into doubled yarn. The wastage arising of of that conversion, has nothing to do with the shortage of the single yarn. The argument of the learned counsel that single yarn was removed by the appellants daily on payment of duty for converting into double yarn and as such the alleged shortage of single yarn was nothing but wastage on account of that conversion process, cannot be accepted for the simple reason that the same stands falsified from the bare perusal of the photocopies of the RG-1 produced by the counsel during the course of arguments before us wherein after removing the single yarn for manufacturing the

double yarn, still balance had been shown. If the entire yarn used to be removed daily for converting into double yarn on payment of duty, then the opening balance on the next day should have been NIL. But that is not the position reflected in the record. That being so, we do not find any sufficient ground to disagree with the concurrent findings of both the authorities below that the shortage of the single yarn detected at the time of physical verification of the stock, was due to the clandestine removal of the same by the appellants without payment of duty. Therefore, the duty and penalty on account of that shortage, in our view, had been rightly confirmed/imposed on the appellants. We do not find any illegality or legal infirmity in the impugned order of the Commissioner (Appeals) and the same is affirmed.

5. Consequently, the appeal of the appellants is dismissed without being any merit. The misc. application also stands disposed of accordingly.”

7. The authorities have recorded reasons for holding that there was shortage of stock at single ply yarn stage. The findings recorded by authorities are pure findings of fact. The petitioner has placed on record invoices of single ply yarn to support its contentions that there was no clandestine removal of finished goods and every single kg yarn was duly accounted for. The authorities including Tribunal examined RG-1 register, invoices and manufacturing process and thereafter concluded that there was shortage of stock at single yarn stage. This Court while adjudicating reference petition cannot reappreciate evidence already appreciated by authorities. The Court cannot form an opinion other than formed by authorities/Tribunal unless order is passed without appreciating evidence on record or order is based upon no evidence. In the instant case, there was search by authorities and during the course of search physical verification of

stock was conducted. The material physically found was compared with recorded in RG-1 register. The question whether there was shortage on the date of search or not is a pure question of fact. The Tribunal has duly recorded reasons while upholding demand.

8. In the wake of above discussions and findings, this Court is of the considered opinion that there is no factual or legal infirmity in the impugned order passed by appellate Tribunal. No question of law arises.

9. Dismissed.

10. Pending application(s), if any, stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

(MANDEEP PANNU)
JUDGE

December 01, 2025
Deepak DPA

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No