CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70175 of 2021

(Arising out of Order-In-AppealNo.21-&-22-CE-Alld-2021, dated-27/01/2021 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s Asma Traders **.....Appellant**
(88/74, Hindustan Compound Plot No. 69,
Jajmau, Kanpur, Uttar Pradesh 208010)

VERSUS

Commissioner, CGST & Central Excise, Kanpur
....Respondent
(Division-II, Kanpur)

APPEARANCE:

Shri Amit Awasthi, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70035/2025

DATE OF HEARING : 16.01.2025
DATE OF DECISION : 16.01.2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-In-Appeal No.21-&-22-CE-Alld-2021, dated-27/01/2021 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad. By the impugned order Commissioner (Appeals) has upheld the order of the Original Authority being Order-In-Original No.13/JC/CE/AUDIT/KNP/2019 dated 31.12.2019 by which following has been held:-

ORDER

> *"21. Accordingly I pass the following Order in terms of saving clause of Section 174 of the Central Goods & Service Tax Act, 2017:-*
>
> *(i) I confirm the demand of Central Excise duty (including cess) amounting to Rs.63,37,805/-for the period February, 2016 to June, 2017 demanded under Section 11A(4) of the Central Excise Act, 1944;*
>
> *(ii) I confirm the demand of Interest on delayed payment of aforesaid amount of duty under Section 11AA of the Central Excise Act, 1944;"*

1.2 He has also allowed the appeal filed by the Revenue and has consequently imposed penalty of Rs.6,33,781/- i.e. 10% of duty amounting Rs.63,37,805/- on the Appellant under Section 11AC(1)(a) of the Central Excise Act, 1944.

1.3 Aggrieved Appellant has filed this appeal.

2.1 Appellant is engaged in the manufacture of Narrow Woven Fabric falling under chapter sub heading 58063200 of the CETA, 1985. During the course of audit it was noticed that the Appellant was paying central excise duty on finished goods namely Narrow Woven Fabric till April 2015. However, the Appellant has stopped paying duty on Narrow Woven Fabric w.e.f 01.05.2015 and started paying duty under protest on intermediate product i.e. Polypropylene Multifilament Yarn[1] falling under chapter subheading 54023910.

2.2 On inquiry it was informed that Appellant paid Central Excise duty on intermediate product under protest by observing procedure of valuation for captive consumption as per Central Excise Rules. They also stated that their final product is exempted as per Notification No.30/2004-Central Excise dated 09.07.2004. The final product narrow woven fabric is exempted as per Notification No.30/2004-Central Excise dated 09.07.2004 provided no credit on input used for manufacture of the finished goods is taken. Appellant was taking credit of duty paid on inputs used in the manufacture of the finished products.

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[1] PPFMY

2.3 A Show Cause Notice dated 30.07.2010 was issued to the Appellant asking him to show cause as to why:-

> *i) Central Excise duty (including cess) amounting to Rs.84,99,878/- should not demanded and recovered from them under Section 11A(4) of the Central Excise Act, 1944;*
>
> *(ii) Interest should not be demanded and recovered from them on delayed payment of aforesaid amount of duty under Section 11AA of the Central Excise Act, 1944;*
>
> *(iii) Penalty should not be imposed upon them under Section 11AC of the Central Excise Act, 1944 for reasons detailed here-in-above*

2.4 This Show Cause Notice was adjudicated as per Order-In-Original referred in Para 01 above.

2.5 Aggrieved Appellant has filed the Appeal before the Commissioner (Appeals) which has been dismissed by the impugned order referred in para 1 above.

2.6 Revenue also filed appeal before the Commissioner (Appeals) and by allowing the said appeal a penalty as indicated in para 1.2 above has been imposed upon the Appellant.

2.7 Aggrieved Appellant has filed the present appeal.

3.1 We have heard Shri Amit Awasthi, Advocate appearing for the Appellant and Shri Manish Raj Authorized Representative, appearing for the revenue.

3.2 Arguing for the Appellant learned counsel submits that:-

- earlier a Show Cause Notice was issued to the Appellant demanding duty on the intermediate product PPFMY which arises during the course of manufacture of the finished products.
- The said Show Cause Notice was adjudicated by the Commissioner vide the Order-In-Original No.16/Commissioner/2011 dated 29.07.2011 confirming the demand and for imposition of penalty.

- This order of the Commissioner was set aside by the Tribunal vide Final Order No.70699 of 2019 dated 25.01.2018 in Excise Appeal No.2601 of 2011.
- The Appellant started paying duty on the intermediate product and for the same was taking cenvat credit from 2015 onwards.
- In the present case Revenue has taken a contrary stand and held duty was not payable in the intermediate products but was to be paid on the final product for the reason they have taken cenvat credit on the inputs used.
- In fact the intermediary product on which they have paid duty they have not taken any credit and hence the demand is bad in law.
- As demand is not sustainable so the penalty imposed also needs to be dropped.

3.3 Learned Authorized Representative for the Revenue has reiterated the impugned order.

4.1 We have considered the impugned order alongwith the submissions made in the appeal and during the course of argument.

4.2 For confirming the demand against the Appellant impugned order records as follows:-

> *"5.1 I observe that appellant no.1 was engaged in the manufacturing of finished goods namely Narrow Woven Fabrics using inputs namely PP Granules, Master Batch, PP Finish Oil, Textile Tube etc. During the course of manufacture of the finished goods an intermediate products namely Polypropylene Multifilament Yarn also comes into existence and the Commissioner. CEX, Kanpur had confirmed duty on the said intermediate product vide order dated 29.07.11. Feeling aggrieved with the order, the appellant had preferred appeal before the CESTAT which was allowed vide Final Order dated 25.01.2018 holding that the intermediate product ie PPMFY is not marketable, hence no duty liability arises. In the mean time, the appellant had started paying duty under protest on PPMFY w.e.f May'2015 & availed CENVAT credit on inputs used in the manufacturing process. The appellant has informed the department vide letter dated 10.04.2015 that they shall pay duty on*

intermediate product i.e PPMFY under protest as their final product Narrow Woven Fabrics is exempt from duty vide Notification No. 30/2004-CE dated 09.07.2004, as amended.

5.2 Now, for the better appreciation of facts, it would be appropriate to quote the relevant portion of the Notification No. 30/2004-CE dated 09.07.2004, as amended, which is reproduced below:

"In exercise of the powers conferred by sub-section (1) of section SA of the Central Excise Act, 1944 (1 of 1944) read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.07/2003-Central Excise dated the 1st March 2003, published in the Gazette of India vide number G.S.R. 137 (E), dated 1st March 2003, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), specified in the corresponding entry in column (2) of the said Table, from whole of the duty of excise leviable thereon under the said Central Excise Act:

Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs or capital goods has been taken under the provisions of the CENVAT Credit Rules, 2002, -

S. No.	*Chapter or heading No. or sub-heading No.*	*Description of goods*
(1)	*(2)*	*(3)*
1	*50.04, 50.05*	*All goods*
…	*……*	*…….*
7	*5402.10, 5402.41,5402.49, 5402.51, 5402.59, 5402.61,*	*Nylon filament yarn or polypropylene multifilament yarn of 210 denierswith tolerance of 6 per cent*
…	*……*	*…….*
13	*58 (except 5804 .90,5805.90, 58.07,5808.10)*	*All goods*
…	*……*	*…….*

It can be seen from the above notification that finished goods i.e Narrow Woven Fabrics (Subheading 58063200) manufactured by the appellant is covered by entry No. 13 of

the table. However, as per proviso to this notification, the exemption is not applicable to the goods in respect of which credit of duty on inputs or capital goods has been taken. As per appellant's contention, they have taken CENVAT credit on inputs which are used in the manufacturing of intermediate product PPMFY on which they have paid duty and they have not taken credit of duty paid on said PPMFY which is input for final products, therefore, entitled to exemption provided under said notification.

5.3 The appellant has also claimed that they have a composite unit having continuous manufacturing process wherein spinning of semi-finished goods ie PPMFY is being done followed by subsequent process namely stretching, warping and braiding is done on a needle loom. The PPMFY generate at this stage is not marketable being integrated and inert-winded in a continuous process, the yarn threads are still open with oil contact and are not even open at the stage of being coned or paper coned or paper tuned and still the said product are bound in loose form in bobbins which has to undergo subsequent operations and the product is in semi-finished form. Such PPMFY cannot be marketed in any manner, thus, no duty is payable on the same. However, the appellant has paid duty on semi-finished goods 'under protest and Hon'ble Tribunal vide its Final Order No. 70699/2019 dated 25.01.2018 has held that PPMFY fails the test of marketability hence not liable to duty. Taking in view that the appellant was not liable to pay duty on intermediate products, the department has issued present show cause notice dated 08.03.2018 by demanding central excise duty on the sale value of finished product ie Narrow Woven Fabric after adjusting the duty paid on intermediate products i.e PPMFY.

5.4 I find that in the present case it was the appellant's claim that they have a composite unit having continuous manufacturing process and intermediate product ie PPMFY generated at this stage is inert-winded in a continuous process, the yarn threads are still open with oil contact and are not even open at the stage of being coned or paper coned or paper tuned and still the said product are bound in loose form in bobbins which has to undergo subsequent operations and the product is in semi-finished form, therefore, cannot be marketed in any manner, thus, no duty is payable on the same. I find no substance in the argument of the appellant that they have taken CENVAT credit on inputs which are used in the manufacturing of intermediate product MMPFY on which they have paid duty and they have not taken credit of duty paid on said MMPPY which is input for final products inasmuch as it is on record & accepted by the appellant too, that in a continuous process intermediate

products are always inert-winded, the yarn threads open with oil contact and are not even open at the stage of being coned or paper coned or paper tuned and still the said product are bound in loose form in bobbins which has to undergo subsequent operations, therefore, cannot be marketed in any manner. The appellant has never intended to manufacture said MMPPY for purpose of sale at any stage and their final products which were intended for sale in the market is Narrow Woven Fabric, therefore, it could not be construed that the credit has been taken on intermediate product which remains in nascent stage during continuous manufacturing process. The appellant could not stretch the meaning of any notification as per their convenience to avail benefit provided therein. Since, the appellant has availed CENVAT credit on inputs involved in the manufacture of goods they de-barred themselves from taking the benefit of exemption of duty under the Notification No. 30/2004-Central Excise dated 09.07.2004 as the proviso of the said notification specifically provides that "nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs or capital goods has been taken under the provisions of the CENVAT Credit Rules, 2002". The Supreme Court in the case of Cadila Laboratories Ltd has held that "even if there is right with the assessee to get exemption, the law enjoins that the procedure stipulated in Rule 56A of the Central Excise Rules, 1944 has to be followed and as the respondents did not follow the procedure, the benefit of Notification is not available to them."

5.5 I observe that the Hon'ble Apex Court in the case of Eagle Flask Industries Limited Vs. Commissioner [2004 (171) ELT 296 (SC)] has held as under:-.

"We find that Notification 11/88 deals with exemption from operation of Rule 174 to exempted goods. The Notification has been issued in exercise of powers conferred by Rule 174-A of the Rules. Inter-alia it is stated therein that, where the goods are chargeable to nil rate of duty or exempted from the whole of duty of excise leviable thereon, the goods are exempted from the operation of Rule 174 of the Rules. The goods are specified in the Schedule to the Central Excise Tariff Act, 1985 (in short 'the Tariff Act'). The Proviso makes it clear that where goods are chargeable to nil rate of duty or where the exemption from the whole of the duty of excise leviable is granted on any of the six categories enumerated, the manufacturer is required to make a declaration and give an undertaking, as specified in the From annexed while claiming exemption for the first time under this Notification and thereafter before the 15th day of April of each financial year. As found by the forums below, including CEGAT,

factually, the declaration and the undertaking were not submitted by the appellants. This is not an empty formality. It is the foundation for availing the benefits under the Notification. It cannot be said that they are mere procedural requirements, with no consequences attached for non-observance. The consequences are denial of benefits under the Notification. For availing benefits under an exemption Notification, the conditions have to be strictly complied with. Therefore, CEGAT endorsed the view that the exemption from operation of Rule 174, was not available to the appellants. On the facts found, the view is on terra firma. We find no merit in this appeal, which is, accordingly, dismissed"

5.5.1 I also observe that in the case of CCE, Chandigarh Vs. Saboo Cylinders (P) Limited [2005 (180) ELT 40 (Tri. Del.)], the Hon'ble Tribunal, New Delhi has held as under:-

5. It is not the case of the respondents that they have ever-exercised the option during the relevant period. As they have not exercised the option, they are de-barred from taking the benefit of concessional rate of duty under the Notification as the notification applies only subject to the fulfillment of the conditions specified therein. The highest Court of the land has upheld this view in the case of Cadila Laboratories Ltd. Wherein the Supreme Court has held that even if there is right with the assessee to get exemption, the law enjoins that the procedure stipulated in Rule 564 of the Central Excise Rules, 1944 has to be followed and as the respondents did not follow the procedure, the benefit of Notification is not available to them. Similar views have been expressed by the Supreme Court recently in the case of Eagle Flask Industries Ltd (2004-TIOL-74-SC-CX) wherein the exemption notification require the assessee to make a declaration and give an undertaking as specified in the form annexed while claiming exemption for the first time and thereafter before the 15th day of April of each financial year. In that matter, the declaration and the undertaking were not submitted by the assessee. The Supreme Court has held that the declaration undertaken was not an empty formulation. "It is the foundation for availing the benefit under the Notification, it can not be said that they are mere procedural requirements with no consequences attached for non-observance. The consequences are denial of benefit under Notifications for availing benefit under exemption notification, the conditions are to be strictly complied with." The Supreme Court, therefore, did not find merit in the Appeal and dismissed the same. In view of these judgments of the highest Court of Land, the decision in the case of Keshari Wire Products (P) Ltd. is not applicable. We, therefore, hold that the benefit of Notification No.9/2002 CE

was not available to the respondents and accordingly the question of refund of any duty to them does not arise. We, therefore, set aside the impugned order and allow the Appeal filed by the Revenue.

5.5.2 I further observe that in the case of PAM Instruments Pvt. Ltd. vs. CCE, Delhi III [2002 (148) ELT 944 (Tri-Del)], the Hon'ble Tribunal has held as under:

"5. We have heard the rival submissions. We have also perused the case-law cited by the learned representative of the company as also the learned DR. We also note that in terms of Clause 4 of Notification No. 9/99-CE Procedure under Chapter X was to be followed. The admitted position was that Chapter X Procedure was not followed in the instant case.

We have seen the ruling of the Apex Court in the case of CCE, Ahmedabad v. Cadila Laboratories (P) Ltd. cited above. We note that even though the benefit of exemption under Notification No. 9/99-CE in terms of Clause 4 accrues to the assessee the law enjoins that procedure stipulated in Chapter X had to be followed. Since the procedure was not followed by the appellant the benefit of Notification No. 9/99 was not available to the assessee. Having regard to the ruling of the Apex Court in the case of Cadila Laboratories (P) Ltd. cited above we hold that benefit under Notification No. 9/99 has rightly been denied."

5.5.3 It is further observed that the Hon,ble Supreme Court in the case of State of Jharkhand & Others Vs Amey Cements & Anr. [2004 (178) ELT 055 (SC)] held that it is a cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. The relevant portion of the said judgement is reproduced below:-

"24. In our view, an exception or an exempting provision in a taxing statute should be construed strictly and it is not open to the Court to ignore the conditions prescribed in the Industrial Policy and the exemption Notifications.

25. In our view, the failure to comply with the requirements renders the writ petition filed by the respondent liable to be dismissed. While mandatory rule must be strictly observed, substantial compliance might suffice in the case of a directory rule.

26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is

the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance of the same must result in canceling the concession made in favour of the grantee-the respondent herein".

5.5.4 It can be seen from the aforementioned judicial pronouncements that a taxing statute should be strictly construed & in a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. I find that in the present case the appellant no.1 has availed CENVAT credit on inputs & it has been specifically mentioned in the exemption Notification No. 30/2004-Central Excise dated 09.07.2004 that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs or capital goods has been taken under the provisions of the CENVAT Credit Rules, 2004, thus, there is no doubt that appellant is, required to pay duty on the finished goods i.e Narrow Woven Fabric as observed by the adjudicating authority in the impugned order.

4.3 We find that the view taken by the Commissioner (Appeals) is in line with the order of the Tribunal in Appellant's own case as per Order dated 25.01.2018 wherein following has been held:-

6. Having considered the rival contentions and perusal of records, we find that the appellants" unit is a composite unit and doing continuous manufacturing process wherein spinning of semi-finished PPMFY is being done followed by subsequent process like stretching, winding, warping and braiding is done on a needle loom. We also find that PPMFY in the stage it is generated is not marketable, being integrated and inter-winded in a continuous process, the yarn threads are still open with oil contact and are not even open at the stage of being coned or paper coned or paper tubed" and still the said product are bound in loose form in heavy iron bobbins which still has to undergo subsequent operations and the product is in semi-finished form. We find that, the said PPMFY cannot be marketed in any manner, therefore, fails the test of marketability. Our view is supported by the decision of Hon"ble Supreme Court of India in the case of Bata India Ltd. vs CCE, [2010 (252) ELT 492 (SC) and also of this Hon"ble Tribunal in the case of Rishi

Baker vs. CCE, Kanpur [2015 (328) ELT 634]. Hence, the said product is not liable for Central Excise duty.

4.4 As the Tribunal has in Appellant's own case held that PPMFY arises during the continuous manufacturing process of Narrow Woven Fabric is not marketable and hence no goods/excisable goods comes into existence. The claim of the Appellant in the present proceedings that they were paying duty on the intermediate product goes contrary to this order as Appellant can pay duty only on the goods/ excisable goods which come into existence and are subject to duty.

4.5 Undisputedly the Appellant has taken a cenvat credit on inputs used in the manufacture of finished goods. In terms of the condition of Exemption Notification No.30/2004-Central Excise the benefit of said Notification would not be available to them, and they are required to pay central excise duty on the finished goods.

4.6 We observe that demand has been confirmed against the Appellant without allowing the benefit of the duty already paid by them by treating PPMFY as excisable goods. The quantum demand confirmed needs to be worked out after making adjustment for the duty already paid.

4.7 Thus while upholding the demand made, we are remanding the matter to the Original Authority for re-computation of the demand after allowing the benefit of the duty already paid in respect of the PPMFY.

4.8 We note that during the period in dispute there was an order of the Commissioner confirming demand in respect of intermediary goods PPMFY. That order was subsequently set aside by the Final Order of the Tribunal dated 25.01.2018. Therefore, the penalty imposed on the Appellant by the impugned order cannot be sustained and is set aside.

5.1 Appeal is allowed. Penalty imposed under Section 11AC(1)(a) amounting to Rs.6,33,781/- is set aside. Matter is

remanded for re-quantification of the demand of duty, giving credit of the duty already paid.

(Dictated and pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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