(2021) 10 CESTAT CK 0033

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 10520, 10521 Of 2013

Kiran Syntex Ltd And Anr. APPELLANT

Vs

C.C.E. And S.T.-Surat-ii RESPONDENT

Date of Decision : 13-10-2021

Acts Referred:

Central Excise Tariff Act, 1985 — Chapter 54
Central Excise Act, 1944 — Section 11A(1)
Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982 — Rule 6A

Citation : (2021) 10 CESTAT CK 0033

Hon'ble Judges : Ramesh Nair, J;Raju, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The brief facts of the case are that the appellant M/s. Kiran Syntex Ltd. was during the period June 1998- to Feb., 2003 engaged in carrying out twisting of polyster yarn at its unit situated at Karanj, Taluka- Mandvi, Surat. At the said factory the appellant was also undertaking the texturizing of yarn till about end of 2001. The said unit is hereinafter referred to as the "Twisting unit." The appellant had another unit situated at Mota Borsara, Taluka Mangrol, Surat where it was under taking dyeing of twisted yarn. The said unit hereinafter referred to as the dyeing unit. The co-appellant Shri Maheshbhai M. Godiwala, who is the Director of Kiran Industries Ltd. At the twisting unit the appellant received texturized yarn or draw twisted yarn which was purchased either from manufacturers under Central Excise invoices or from the open market from various dealers under Commercial Invoices. The appellant then subjected such yarn purchased by it to the process of twisting. In respect of such twisting yarn, the appellant availed the benefit of duty exemption under the following Notifications issued from time to time.

NOTIFICATION NO.

DATE

SERIAL NO.

5/1998-CE

02.06.1998

121

5/1999-CE

28.02.1999

115

6/2000-CE

01.03.2000

115

3/2001-CE

01.03.2001

128

6/2002-CE

01.03.2001

123

The aforesaid notifications granted exemption to twisted polyster filament yarn manufactured out of textured or draw polyster filament yarn falling within Chapter 54 of the First Schedule to the Central Excise Tariff Act on which the appropriate duty of excise under the first schedule, special duty of excise under the second schedule or as the case may be, the additional duty leviable under the Customs Tariff Act, 1975 (51 of 1975) has already been paid. The appellant availed the aforesaid notifications on the twisting yarn made out of the textured yarn purchased by them from the open market.

1.1 Further at the twisting unit, the appellant also received partially oriented yarn/non-texturised yarn purchased by the appellant which the appellants subjected to the process of texturising for the period up to the end of 2001. The appellant paid the duty on textured yarn which was then subjected to the process of twisting in respect of such twisted yarn, the appellant availed exemption under the aforesaid notifications, part of the texturized yarn was also sold on payment of duty.

1.2 At the dyeing unit, the appellant carried out dyeing of the twisted yarn received from the appellants at twisting unit which was made out of duty paid textured or draw twisted yarn.

1.3 Further the appellant also carried out dyeing on the textured yarn purchased

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from the open market as well as on draw twisted yarn purchased from the open market. In respect of such dyed yarn, the appellant availed partial exemption from duty under the following notifications.

NOTIFICATION NO.

DATE

SERIAL NO.

EFFECTIVE RATE OF DUTY

5/1998-CE

02.06.1998

140

Rs.9/Kg

5/1999-CE

28.02.1999

134

Rs.9/Kg

6/2000-CE

01.03.2000

134

Rs.9/Kg

3/2001-CE

01.03.2001

131

Rs.9/Kg

6/2002-CE

01.03.2001

126

Rs.9/Kg

The aforesaid notifications granted exemption to dyed yarn manufactured in a factory which did not have the facilities (including plant and equipment) for producing single yarn and subject to the conditions that the dyed yarn is manufactured out of textured or draw twisted yarn falling within Chapter 54 of the first schedule on which the appropriate duty of excise under the first

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schedule or the special duty of excise under the second schedule or as the case may be, the additional duty leviable under the Customs Tariff Act, 1975 (51 of 1975) has already been paid and provided, no credit has been availed in the process of dyeing.

1.4 In February 2002, the officers of Directorate General of Central Excise Intelligence (DGCEI) Ahmedabad initiated investigations into the availing of exemptions by the appellant under the aforesaid notifications, in respect of the yarn twisted at the twisting unit and the yarn dyed at the dyeing unit. The Investigations culminated in issuance of Show Cause Notice dated 30.06.2002 demanding duty for the period June, 1998 to February, 2003. The case of the department in the Show Cause Notice was as follows:-

a) In respect of twisted yarn, it is contended that in respect of the yarn purchased by the appellant from the open market and subjected to twisting, there is no evidence of duty paid on such yarn procured from the open market therefore, it cannot be said that the entire quantity of twisted yarn was made out of duty paid yarn. On that basis duty is demanded in respect of twisted yarn.

b) In respect of the dyed yarn, it is contended that though duty paid textured yarn was used to make twisted yarn which in turn was dyed. Since exemption from duty was availed on twisted yarn, it cannot be said that dyed yarn was made out of duty paid yarn. On that basis duty is demanded on dyed yarn.

c) In respect of dyed yarn which was made out of textured or twisted yarn purchased from the open market. It is contended that since such yarn purchased from the open market was not supported by evidence or duty payment. It cannot be said that dyed yarn was made out of duty paid yarn on that basis duty is demanded on dyed yarn.

1.5 The said Show Cause Notice invoked the larger period of limitation. The appellant contested the Show Cause Notice both on merits and on limitation. However, the said show cause notice was confirmed by Order-In-Original dated 15.2.2005 which was set aside by the tribunal vide Order dated 24.06.2005 and the matter was remanded by the Tribunal for a fresh adjudication. Upon remand the appellant filed written submissions and by fresh Order-In-Original dated 10.04.2006, the show cause notice was once again confirmed in appeal filed by the appellant. Against the said order, the Hon'ble Tribunal vide order dated 13.5.2011 set aside the said order dated 10.04.2006 and remanded the matter to the adjudicating authority. On the issue of limitation, the tribunal ordered that the adjudicating authority shall decide the issue of limitation based upon decision of the Hon'ble tribunal in an identical case of Kiran Industries in which on identical facts it was held by the tribunal that the larger period of limitation does not apply. Upon the matter being so remanded, the adjudicating authority by the present impugned Order-In-Original dated 31.12.2012 confirmed the show cause notice therefore, the present appeals filed by the appellants.

2. Shri J.C.Patel, Ms. Shamita Patel and Shri Rahul Gajera, learned counsels

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appeared on behalf of the appellants. Shri J.C.Patel in his argument made the following submissions:-

ON MERITS:

In respect of Twisted Yarn:

2.1 The Twisted Yarn was manufactured out of the following:

a) Partially Oriented Yarn/ Non-Texturized yarn purchased and Textured by the Appellant and on which Textured Yarn Appellant paid duty,

b) "Texturized Yarn" or "Draw-Twisted Yarn" which was purchased either from manufacturers under Central Excise Invoices or from the open market from various Dealers under Commercial Invoices.

2.2 As regards Twisted Yarn made out of the Yarn Textured by the Appellant, since the Appellant had paid duty on the Textured Yarn so captively consumed, the Appellant had correctly availed the exemption on the Twisted yarn under the aforesaid Notifications. The Show Cause Notice itself accepts in Para 7.1 (Page 89 of the Appeal) that the Appellant was discharging duty on the texturized yarn being manufactured in the twisting unit and further captively consumed for manufacture of twisted yarn. The fact that duty was discharged on the Yarn textured in the Twisting unit and captively used in manufacture of Twisted yarn is also established by the fact on such Textured Yarn mentioned in Work Sheet 1(2) in Show Cause Notice at Page 97 of the Appeal there is no duty demand in Worksheet No.2 on page 100 of the Appeal.

2.3 Since admittedly duty was paid on Yarn Textured in the Twisting unit and captively used in the manufacture of Twisted Yarn, the Appellant had correctly availed the exemption on such Twisted Yarn under the said Notifications, since the said Notifications grant exemption to Twisted yarn manufactured out of duty paid Textured Yarn.

2.4 As regards the Twisted Yarn manufactured out of Texturized or draw-Twisted Yarn purchased from manufacturers under Central Excise Invoices showing payment of duty, there can be no dispute about such Twisted Yarn being eligible for exemption under the said Notifications. However, the Show Cause Notice contends (Para 7.1-Page 89 of the Appeal) that in respect of the yarn purchased by the Appellant from the open market and subjected to Twisting, there is no evidence of duty paid on such yarn procured from the open market and therefore it cannot be said that the entire quantity of Twisted yarn was made out of duty paid yarn. On that basis, duty is demanded in respect of the Twisted Yarn.

2.5 It is submitted that the aforesaid basis in the Show Cause Notice for demand of duty on Twisted Yarn is untenable in law because as laid down in the following judgments, goods which are purchased from the open market are deemed to be duty paid:

? CCE v Decent Dyeing Co - 1990 (45) ELT 201 (SC):

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? Nagpur Re-Rolling Mills v CCE- 2001 (136) ELT 423:

? Usha Udyog v CCE - 2001 (136) ELT 1031:

He submits that in view of the above judgments when the yarn is purchased from the open market it is deemed to be duty paid and appellant does not have to show purchase on payment of duty.

IN RESPECT OF DYED YARN

2.6 At the Dyeing unit, the Dyed Yarn was manufactured out of the following:

a) Twisted Yarn received from the Appellant's Twisting Unit which was made out of duty paid Textured or draw-twisted yarn,

b) Textured or draw-twisted Yarn purchased from the open market.

2.7 Dyed Yarn made out of Twisted Yarn received from the Twisting unit: As regards the Dyed yarn made out of Twisted Yarn received from the Appellant's Twisting unit, the Show Cause Notice contends that since no duty was paid on Twisted Yarn by the Twisting unit, the Dyed Yarn made out of such non-duty paid Twisted Yarn is not eligible for the aforesaid exemption Notifications.

2.8 The said contention of the department is untenable in law. When the Dyed Yarn is made out of Twisted Yarn and the Twisted Yarn in turn is made out of duty paid Textured or Draw-Twisted yarn, the Dyed Yarn is also to be considered as having been made out of duty paid Textured or Draw-Twisted yarn and therefore eligible for the benefit of the said Notifications. Reliance is placed in this behalf on the following decisions:

a) Kejriwal Yarns P. Ltd v CCE -2010 (261) ELT 513:

b) Precot Mills Ltd v CCE - 2005 (183) ELT 407

c) CCE v Atul Drug House-1996 (84) ELT 495

2.9 Dyed Yarn manufactured out of Textured or draw-Twisted yarn purchased from open market: As submitted herein above, such yarn purchased from open market is to be deemed to be duty paid and there is no evidence to establish that the said yarn purchased by the Appellant was not duty paid. Therefore, the dyed yarn made out of the same is entitled to the said exemption. The Submissions made herein above in Para 2.5 and the reliance on the judgments mentioned in the said Para 2.5 are reiterated.

ON LIMITATION

As regard limitation he submits that the Show Cause Notice dated 30.06.2003 and demanded duty for the period June, 1998 to February, 2003 which invokes the extended period of limitation more than one year as specified in Section 11A(1) of the Central Excise Act, 1944 it is to that extent barred by time. He submits that in the present case there is no fraud, wilful mis-statement or

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suppression of facts or contravention with the evidence to evade duty. The appellant had a bona fide belief in view of the various judgments of Supreme Court and the Tribunal that it is settled legal position that the yarn purchased from the open market is deemed to be duty paid and after that dyed yarn is made out of twisted yarn which in turn is made out of duty paid yarn. The dyed yarn is to be considered to have been made out of duty paid yarn, the said belief of the appellant is well supported by the decision referred to hereinabove therefore, claiming an exemption based on the said bona fide belief cannot and does not justify invoking of larger period of limitation as laid down in the following decisions which are on similar facts.

? USHA UDHYOG V/s. C.C.E.-2001 (136) ELT 1031 upheld in CCE V/s. USHA UDHYOG- 2002 (144) ELT A298 (S.C.)

? KEJRIWAL YARNS PVT. LTD.V/s. CCE 2010 (261) ELT 513

2.10 He further submits that the adjudicating authority has not followed the directions given by this tribunal in the remand order dated 13.5.2011 wherein, it was ordered that the adjudicating authority shall decide the issue of limitation based upon the decision of the hon'ble Tribunal in an identical case of KIRAN INDUSTRIES in which on identical facts, it was held by the tribunal that the larger period of limitation does not apply. With his above submissions he prays for setting aside the impugned Order-In-Original and allow the appeals.

3. On the other hand, Shri Ghanshyam Soni, Learned Joint Commissioner (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He has filed an additional written submission dated 02.08.2021 which was taken on record and considered. In his submission, he placed reliance on the following judgments:-

? CCE, VADODARA v/S. DHIREN CHEMICAL INDUSTRIES-2002 (139) ELT 3 (SC)

? KALYANI PACKAGING INDUSTRY v/S. UNION OF INDIA-2004 (168) ELT 145 (SC)

? LARSEN & TOUBRO LTD. v/S. CCE, CHENNAI-IV-2018 (363) ELT 337 (Tri.-Chennai)

? CC (IMPORT)MUMBAI v/S. DILIP KUMAR & CO.-2018 (361) ELT 577 (SC)

? BPL LTD. v/S., COCHIN II-2015 (319) ELT 556 (SC)

? BPL LTD. v/S. COMMISSIONER- 2015 (324) ELT A79 (SC)

? MOTIRAM TOLARAM v/S. UNION OF INDIA-1999 (112) ELT 749 (SC)

? VARDHAMAN PLASTOCHEM P.LTD. v/S. CCE, DAMAN-2018 (364) ELT 927 (Tri.-Ahmd)

? SHRI AJAY S. SINGHAL v/S. CCE, VAPI-2013- TIOL-1916-CESTAT-AHM

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? PHARMACIA v/S. CCE, THANE-II- 2017 (349) ELT 765 (Tri.-Mum)

? SRI RAMA MACHINERY CORPORATION LTD. v/S. CCE, CHENNAI-I-2017 (348) ELT 540 (Tri.-Chennai)

? CCE, KANPUR v/S. P.P. POLYPLAST P. LTD.-2017 (346) ELT 409 (Tri.-Del.)

The Authorized Representative also raised an issue that there are two units of the appellants and separate demand was confirmed therefore, they were supposed to file two appeals in terms of rule 6A of Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

3.1 The appellant on the post hearing filed an additional submission dated 04th October, 2021 which is mainly on the counter of the judgments relied upon by the revenue.

4. We have carefully considered the submissions made by both the sides and perused the records. As regard preliminary issue raised by the revenue that being two units of the appellants involved in this case, whether only one appeal is sufficient or one more appeal is required to be filed. We find that this is third round of appeal. This issue was not disputed by the revenue in earlier two round of appeals, which attained finality, therefore at this stage the objection of the revenue is not tenable. Moreover, even though there are two units i.e. Twisting unit and other is Dyeing unit but both the units belongs to one company, hence only one consolidated appeal is sufficient, particularly when Order-In-Original is one common order in respect of both the units. Hence, the revenue's objection on this point is not sustained.

The issue on merit to be decided by us is that:

a) Whether the appellant is entitle for exemption notifications in respect of twisted yarn and dyed yarn under various exemption notifications &

b) Whether the appellant have fulfilled the conditions of manufacture of exempted goods from the duty paid inputs.

c) Whether the inputs procured from open market on commercial invoices can be treated as duty paid goods or otherwise.

d) Whether the condition of use of duty paid goods stands satisfied in a case where the duty was paid on the textured or draw twisted yarn by the appellant which was then utilized in the twisted yarn and on the said twisted yarn the exemption was availed.

4.1 In the present case, the duty demand is on twisted yarn and dyed yarn. The twisted yarn was manufactured out of partially oriented yarn/non-texturized yarn purchased and textured by the appellant and on which textured yarn appellant paid duty and the texturized yarn or draw-twisted yarn which was purchased from the manufacturers under the Central Excise Invoices or from the open market from various dealers under Commercial invoices.

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4.2 As regard the twisted yarn manufactured out of the Yarn textured by the appellant, since the appellant had paid duty of textured yarn the appellant had correctly availed the exemption on the twisted yarn under the aforesaid notifications. As regard the twisted yarn manufactured out of textured or draw-twisted yarn purchased from manufacturers under Central Excise Invoice showing payment of duty, there cannot be any dispute about such twisted yarn being eligible for exemption under the said notification. The contention of the Show Cause Notice in respect of yarn purchased by the appellant from the open market and subjected to twisting, there is no evidence of duty paid on such yarn procured from the open market therefore, it cannot be said that the entire quantity of twisting yarn was made out of duty paid yarn. On that basis, the duty was demanded in respect of twisted yarn.

4.3 In this respect we find that since the appellant have procured the goods from the open market the same being not procured directly from the manufacturer they have not received the duty paid invoices however, the department could not establish that the texturized or draw twisted yarn purchased from the open market is non duty paid. The goods per se indeed dutiable and does not attract nil rate of duty therefore, it cannot be said that merely because the goods were purchased from open market under commercial invoices is non duty paid. This issue has been considered in various judgments cited by the appellant wherein, it was held that the goods which were purchased from the open market are deemed to be duty paid. The judgments are reproduced below:-

? CCE v Decent Dyeing Co - 1990 (45) ELT 201 (SC): In this case the partial duty exemption was to Textured Yarn if produced out of duty paid base yarn and the Hon'ble Supreme Court held that the burden to prove the duty paid character of the base yarn is not the manufacturer of the textured yarn who has purchased the base yarn. The Supreme Court held that the base yarn purchased is deemed to be duty paid since no goods can be removed from the place of manufacture without payment of duty.

The purchaser of the base yarn can presume that the same is duty paid. The Supreme Court in Para 5 held that it would be intolerable if the purchaser were required to ascertain that whether the duty had already been paid on the base yarn purchased as the purchaser would have no means of knowing it.

? Nagpur Re-Rolling Mills v CCE- 2001 (136) ELT 423:In this case MS Flats and Bars were exempt from duty if manufactured out of duty paid inputs/ingots. The Hon'ble Tribunal held that the inputs purchased from open market are deemed to be duty paid and the exemption cannot be denied unless the department establishes by evidence that such inputs were non-duty paid.

? Usha Udyog v CCE - 2001 (136) ELT 1031: In this case, Iron and steel bars, rods, angles, etc were exempt from duty if made out of duty paid raw materials. It was held that the re-rollable material bought from the open market and used in manufacture of iron and steel bars, rods, angles, etc is to be deemed to be

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duty paid and the exemption cannot be denied unless the department establishes by evidence that such material bought from open market was non-duty paid. The department's civil appeal against this decision has been dismissed by the Hon'ble Supreme Court as reported in CCE v Usha Udyog - 2002 (144) ELT A298 (SC).

In the above judgments, it is clearly held that when the yarn is purchased from the open market it is deemed to be duty paid and the appellant does not have to show the purchase on payment of duty. The adjudicating authority simply relied upon the statements of the appellant's representative that the base yarn was purchased from local merchants from open market without duty paid invoice. Only on the basis of these statements, it cannot be established that the base yarn procured from the open market shall be treated as non duty paid.

4.4 As regard the dyed yarn, the same was manufactured partly from twisted yarn received from the appellant's twisting unit which was made out of duty paid textured or draw twisted yarn and the textured or draw twisted yarn purchased from the open market.

4.5 As regard the twisted yarn received from the appellant's twisting unit, there is no dispute that though the appellant have availed exemption on twisted yarn but the textured or draw twisted yarn used by the appellant themselves for manufacture of twisted yarn the appropriate excise duty was paid.

4.6 In this case since right from the processing of textured or draw twisted yarn up to the manufacture of dyed yarn, the activities were carried out by the appellants themselves. Since the initial raw material i.e. Textured or draw Twisted yarn on which excise duty was paid, the condition of the exemption provided to dyed yarn that the same should be manufactured out of duty paid goods stands satisfied. The contention of the department is that since the dyed yarn was manufactured by the appellant from the twisted yarn on which exemption from duty was availed the condition of exemption of dyed yarn was not complied with is not tenable. When the dyed yarn is made out of twisted yarn and the twisted yarn in turn is made out of duty paid or draw twisted yarn the dyed yarn is also to be considered as having been manufactured out of duty paid textured or drawn twisted yarn therefore, they are eligible for the benefit of the said notifications. This particular issue has been considered in the following judgments:-

? Kejriwal Yarns P. Ltd v CCE -2010 (261) ELT 513: In this case it is held that where the duty paid texturized yarn is made in to Twisted Yarn which is exempted from duty and such exempted Twisted Yarn is then used to make Dyed Yarn, the Dyed Yarn is to be considered to have been made out of duty paid Texturized yarn and therefore the Dye Yarn will be eligible for the concessional rate of duty under the said Notifications.

? Precot Mills Ltd v CCE - 2005 (183) ELT 407: This decision was followed in the aforesaid decision in Kejriwal Yarns P. Ltd. It is held in this decision that if Dyed yarn is made out of Exempted double yarn which was made from duty paid

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Single yarn, the Dyed yarn is to be considered as having been made from duty paid yarn and therefore eligible for the exemption.

? CCE v Atul Drug House-1996 (84) ELT 495: In this case, Notification granted exemption to Plastic Articles made out of duty paid plastic material falling under Headings 39.01 to 39.15. The assessee manufactured PVC Containers out of PVC Lay Flat Tubings, which in turn were manufactured out of duty paid plastic material falling under the said headings. It was held that the PVC containers are to be considered to have been made out of the duty paid plastic material of the said headings and therefore eligible for the exemption.

4.7 As regard the dyed yarn made out of draw or twisted yarn purchased from open market such yarn purchased from the open market has to be treated to be duty paid since, the department could not establish that the said yarn purchased by the appellant was not duty paid. This issue has already been discussed by us in para 4.3 above which is equally applicable in this case of dyed yarn also therefore, the dyed yarn made out of the yarn purchased from the open market is entitle to the exemption.

4.8 As regard the submission made by the appellant on limitation, we find that in the present case the issue involved is of interpretation of notification. On the same issue there were number of judgments including the judgment of Supreme Court in favour of the assessee therefore, the appellant had entertained bona fide belief that they are entitle for the exemptions notifications therefore, it cannot be said that there is any fraud, collusion, wilful misstatement or suppression of facts or contravention with intention to evade duty on the part of the appellant. Moreover, in the earlier round of the appeal in the same case before this Tribunal, the Tribunal has given the observation in the order dated 13.05.2011 that the Adjudicating Authority shall decide the issue of the limitation following the decision of the Tribunal, in identical case of KIRAN INDUSTRIES in which on identical facts it was held by the Tribunal that the larger period of limitation does not apply. We find that in the case of KIRAN INDUSTRIES the demand for longer period was set aside. The facts of this case as well as KIRAN INDUSTRIES'S case are absolutely identical therefore, following the decision of KIRAN INDUSTRIES particularly when it was directed by this Tribunal, it was incumbent on the Learned Commissioner to drop the demand for the longer period. Accordingly, we are of the clear view that demand for the longer period is clearly not sustainable.

4.9 As regard the judgment relied upon by the revenue in the case of Dhiren Chemical Industries -2002 (139) E.L.T. 3 (SC) and on Board's Circular No. 125/36/95-CX, dated 15-5-1995, we find that the said judgment is not directly applicable, in the facts of the present case for the reason that in the said judgment the Hon'ble Supreme Court has held that where the goods is exempted or attract nil rate of duty used in such goods shall not entitle the manufacture to avail exemption which contains the condition that goods should be used out of the other goods on which duty was paid. In the present case, the department

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has not established that the goods which was procured from open market either attracts nil rate of duty or some exemption was availed. In the present case also since, the goods purchased directly from the manufacturer and purchased from the open market it cannot be said that, the goods used is either exempted or attracts nil rate of duty. Hence, the ratio of the Hon'ble Supreme Court judgment in the Dhiren Chemical Industries (supra) case is not applicable to the facts of the present case.

5. As per our above discussion and findings the impugned order is not sustainable on merit as well as on limitation. Accordingly, the impugned order is set aside and appeals are allowed with consequential reliefs, if any, in accordance with law.

(Pronounced in the open court on 13.10.2021)

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