

---

**(2014) 04 AP CK 0150**

**In the Andhra Pradesh High Court**

**Case No :** Central Excise Appeals 47, 49 and 51 of 2005

The Commissioner of Central Excise

APPELLANT

Vs

Dhanalaksmi Cloth Dyeing and Printing Works

RESPONDENT

---

**Date of Decision :** 02-04-2014

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 11A, 11C, 35G

**Citation :** (2014) 309 ELT 660 : (2014) 28 GSTR 372

**Hon'ble Judges :** G. Chandraiah, J;Challa Kodanda Ram, J

**Bench :** Division Bench

**Advocate :** K. Manmadha Rao, SC, Advocate for the Appellant; V. Brahmmaiah Chowdary, Advocate for the Respondent

---

## **Judgement**

G. Chandraiah, J.—Inasmuch as the issue involved in these three Central Excise Appeals is one and the same, these matters are taken up together for disposal by this common judgment.

2. These appeals are filed by the Commissioner of Central Excise u/s 35G of the Central Excise Act, 1944 (for short "the Act") against the Final Order No. 01-03, dated 03.01.2005 passed by the Customs, Excise & Service Tax Appellate Tribunal (for short "CESTAT"), Bangalore.

3. For the purpose of adjudication, the following pleadings which are made in C.E.A. No. 51 of 2005 may be taken note of.

4. The respondent-assessee undertakes the business of processing cotton fabrics falling under Chapter Heading No. 52.07 of Central Excise Tariff Act, 1985. The respondent was issued a Show Cause Notice dated 22.12.1999 demanding a duty amount of Rs. 2,39,151/- under Rule 9(2) of Central Excise Rules, 1944 (for brevity "the Rules") read with Section 11A of the Act, and to show cause as to why penalty should not be imposed under Rule 9(2) and Rule 173Q. of the Rules, and why interest at 20% p.a. should not be demanded. The respondent submitted his detailed explanation dated 06.12.2000 and raised the following

objections:

- i) The show cause notices were hit by limitation of time and invocation of proviso (1) to Section 11A was not justifiable.
- ii) In their declaration dt.23.04.1998 filed for the year 1998-99 in terms of Notification No. 13/92-CE(NT) as amended, they have brought to the notice of the department the processes undertaken, as also their eligibility towards the exemption notification.
- iii) The department had clear knowledge of process of manufacture and impugned clearances of cotton fabrics. In fact, Order-in-Original (O-I-0 No. 2/98-ASR dt.19.02.1988) was passed by the then Commissioner, Central Excise, Visakhapatnam, clearly detailing departmental knowledge of the process of manufacture.
- iv) It was only to meet the statutory requirement under the factories Act they sought the permission for installation of machines and the letter issued by the Inspector of Factories as per the provisions of the Factories Act does not incriminate them in any manner.
- v) Drawing of water with power and using the same and clearing Grey fabrics cannot be considered a process relatable to processing grey fabrics.
- vi) All the processes of the grey cloth had been undertaken manually and they had not got sophisticated machinery worth mentioning which could be operated by power.
- vii) Calendaring done with the aid of 3 HP electric motor is nothing but pressing of the sarees and permissible process for claiming exemption.
- viii) They had not used power in any of the processes mentioned in the relevant Central Excise exemption Notification.
- ix) The Finance Ministry had issued Notification No. 35/99-CE dt.04.08.1999 substituting explanation to erstwhile Notification No. 5/99-CE dt.28.02.1999 accepting their view point in their representations made by them to the Ministry u/s 11C of Central Excise Act. They have contended that the correct explanation/interpretation should be de facto made applicable to all present cases pending adjudication, keeping in view the right spirit of law.
- x) No separate penalty is applicable to Sri S. Venkata Ramana, Proprietor, under Rule 209A as there is no split personality of the Managing Partner in individual capacity.

After considering the objections filed by the respondent-assessee and affording personal hearing, the Commissioner recorded that as a matter of fact the assessee was entitled to the benefit of the exemption notification under Serial No. 13 of Notification No. 9/96-CE, dated 23.07.1996 as amended and also exemption notification No. 40/95-CE, dated 16.03.1995 and dropped the

proceedings against the respondent-assessee. Though the respondent had specifically raised a ground objecting to the Commissioner applying for extended period of limitation u/s 11A of the Act, the Commissioner did not decide the issue on the ground of merits and found the respondent eligible for exemption under the relevant notifications. The order of the Commissioner was assailed by the Revenue before the CESTAT on the following grounds:

i) that Notification No. 35/99 dated 04.08.1999 was not available to the respondent for the period in issue.

ii) since the process of calendaring, stentering, padding, etc. are carried on with the aid of power and bleaching, dying and printing and process not mentioned in the Notification No. 40/95 are also carried on the same factory, exemption under the Notification No. 40/95 is not available to the respondent. Additional excise duty under Rule No. 5 (ii) of Notification No. 41/95 is payable on the process of cotton fabrics up to 22.07.1996 as they were rescinded only on 23.07.1996.

iii) The benefit of exemption under Notification Nos. 8/96 and 9/96 dated 16.03.1996 for the period after 23.07.1996 was not proper.

iv) The finding of the Commissioner that Serial No. 13 of Notification 9/96 is not correct and the processes mentioned in Serial No. (i) to (xii) also should not be carried out with the aid of power and in that view of the matter, the benefit under Notification No. 9/96 is not available.

In addition to the above common grounds with respect to the respondent in C.E.A. No. 49 of 2005, a specific further ground was raised that A.E.D. and B.E.D. was leviable for the period from 01.08.1995 to 04.08.1999 under Notification Nos. 41/95 and 8/96. With respect to the respondent in C.E.A. No. 51 of 2005, A.E.D. is leviable under Notification No. 41/95 and B.E.D. under Notification No. 9/96 for the period between 01.08.1995 to 04.08.1999 and 23.07.1996 to 04.08.1999.

v) The respondents were engaged in the business of manufacturing process of cotton fabrics since 1991-92 and it is only during survey in March, 1998 the Unions were found to be using power, as such, there was suppression with regard to the usage of power and on that ground invocation of Section 11A is justifiable though the Commissioner had not decided the issue.

5. The Tribunal, having considered the rival submissions with reference to the relevant case law, confirmed the order of the Commissioner by dismissing the appeals filed by the Department.

6. We have heard Dr. K. Manmadha Rao, learned Standing Counsel for Central Excise appearing for the appellant, and Sri V. Brahmmaiah Chowdary, learned counsel for the respondents and perused the material on record.

7. The arguments, which are advanced by the Revenue before this Court, were already put forth before the Tribunal. The entire issue in controversy would hinge

upon proper interpretation of the exemption Notification No. 40/95 dated 16.03.1995 and the Notification No. 9/96, dated 23.07.1996. In addition, the benefit of subsequent Notification Nos. 8/96 and 9/96 are also available to the respondents. The Commissioner, the primary authority, on appreciation of the facts, categorically found that the assessee is not using power in its process of manufacture for the purpose of dyeing, printing on the fabric. After detailed analysis of the manufacturing process which was extracted in paragraph No. 11 of its order, the Tribunal had categorically found that the dyeing and printing processes were done manually, and hence, they are outside the ambit of any dispute as regards their eligibility under Notification No. 40/95. Similarly, washing of grey cloth by hand in tanks is very much a manual process. By following earlier CEGAT decision in Final Order No. 733 of 1997, dated 01.03.1997, the process of silicate padding for fixation of ramzol dyes was held to be the process of curing which does not disentitle the exemption in terms of Notification No. 40/1995. The Tribunal merely followed the Final Order No. 733 of 1997. The use of power either diesel power or electric power was not disputed by the respondents, but the contention of the respondents is to the effect that the restriction placed with respect to use of the power is only in relation to carrying activities of bleaching, dyeing or printing or anyone or more of the processes and not in relation to the operations of stentering, starching on a padding mangle, pressing machine (finishing) of the fabric or two stirrer machines for mixing starch/dyes. It was found by the Commissioner that usage of power (low HP diesel engine) in some of the processes disentitles them for exemption under Notification No. 48 of 1990, dated 20.03.1990. The claim of the respondents for exemption under Notification No. 9/96 and 40/95 was found to be perfectly in order as it is always open for the respondents to take advantage of one or the other exemption notifications available so long as they satisfy and fulfill the conditions of such exemption notifications.

8. In the present case, as stated supra, the aspect of ineligibility of the benefit of Notification No. 40/95 would get attracted only when the respondents' usage of power in the process of bleaching, dyeing and painting and not with respect to usage of power in carrying out any of the processes mentioned in paragraph No. 2 of the Notification. Likewise, under Notification No. 9/96 which was a subsequent notification, there were 12 processes which were specified and the disability is mentioned in Condition No. 1 which is only in respect of the manufacture of denim fabrics. In relation to the respondents, it is nobody's case that they are manufacturers of denim fabrics or other fabrics mentioned in the prohibited category. As a matter of fact, when we look critically into the orders of both the Commissioner and the Tribunal, the usage of power is only in relation to the activities like pumping of water from the bore-well, small motors being fixed with sterner of the dies, etc. which is not prohibited. A comprehensive analysis and understanding of the notification by which the exceptions carved out to deny the exemption where power is used, would leave no manner of doubt that usage of power is restricted only in an integrated manufacturing process by specifying

the specific processes. In that view of the matter, the order of the Tribunal, based on the findings of the Commissioner, which are not challenged before us, does not call for interference on merits.

9. Further, the order of the Commissioner itself records that the respondents by letter dated 23.03.1998 had explained in detail the process of manufacturing since 1992 and periodical checks were being done by the Department, and as a matter of fact, a show cause notice was issued earlier and an order in original was passed in O.I.O. No. 2/98 - ASR, dated 19.02.1998 (mentioned as 1988) which goes to show the knowledge of the departmental officials, and in that view of the matter, there is no justification for invoking the extended period of limitation u/s 11A of the Act, and there is no contra material before us to take a contra view. Even on the ground of limitation, the appeal of the Department would fail.

10. Another aspect which has been brought out by the learned counsel for the respondents is that no challenge is made before us with respect to the eligibility of the respondents by virtue of paragraph No. 13 of exemption Notification No. 9/96. A perusal of the order of the Tribunal would go to show that the Tribunal specifically addressed the issue and considered the eligibility of the respondents under Notification No. 9/96. As rightly contended by the learned counsel for the respondents, in the absence of challenge being made on that ground also the appeal is liable to be dismissed. From a perusal of the records in relation to other appeals we find that Show Cause Notices in all the three cases are of the same date. The contents of the order of the Commissioner are identical and a common order was passed by the Tribunal. As a matter of fact, the usage of diesel engine is only confined to the case of the respondent in C.E.A. No. 51 of 2005 and there is no such usage of diesel engine in case of other respondents involved in C.E.A. Nos. 47 and 49 of 2005. As the facts are identical, grounds of challenge being identical for the reasons set out supra, the appeals are liable to be dismissed.

11. Accordingly, the three Central Excise Appeals are dismissed. No order as to costs.

12. As a sequel to the dismissal of the appeals, Miscellaneous Petitions, if any pending in all the appeals, shall stand disposed of as infructuous.