

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

SOUTH ZONAL BENCH

CHENNAI

E/442/2003 & E/CO/16/2004

(Arising out of Order-in-Original No. 14/2010 dated 20.03.2010, passed by the Commissioner of Central Excise, Coimbatore).

CCE, Salem: Appellant

Vs.

M/s. Sree Srinivasa Processing : Respondent

Appearance

Shri Rammohan Rao, DC (AR), for the appellant

Shri S. Venkatachalam, Adv., for the respondent

CORAM

Honble Shri R. PERIASAMI, Technical Member

Date of Hearing: 20.01.2015

Date of Pronouncement: 22.05.2015

FINAL ORDER No. 40553 / 2015

Revenue filed appeal against the Order in Original No. 14/2010 dated 20.03.2010 passed by the Commissioner of Central Excise, Coimbatore against dropping of proceedings.

2. The brief facts of the case are that officers of Headquarters (Preventive) of Central Excise Commissionerate, Coimbatore conducted a road check on 06.03.2001 and intercepted one Matador van bearing registration No. TN 27 E 1854 proceeding from Bhawani to Erode found carrying 11069.30 mtrs. of dyed cotton woven fabrics without valid documents. Shri C. Manikandan, was accompanying the van, identifying himself as in charge of purchases in M/s. Sree Srinivasa Processing, Kumarapalayam (the respondent). Dyed cotton woven fabrics were loaded from the respondent factory at 15.00 hrs and the same were transported for delivery at M/s. Sindu Cotton Mills, (herein after SCM), Erode. The said fabrics valued at Rs.2,49,059/-were seized on the reasonable belief that the same were processed and cleared clandestinely without payment of duty and without central excise documents by the respondent and the van was also seized. Officers conducted series of follow up actions and recorded statements from Shri C. Manikandan, an employee of the respondent company and also visited the respondent unit on the same day and verified the records and clearance of fabrics and delivery challans on 06.03.2001 in the presence of Shri S. Rajasekaran, Managing Partner of the respondent company and recorded his statement and found that respondent not accounted in their production register not raised any invoices for clearance of the goods seized in Transit. He admitted that SCM required the fabrics urgently and Shri C. Manikandan, staff of their company, without their knowledge taken the fabrics and agreed pay the duty on the seized goods. Further, statement was recorded from Shri S. Rajasekaran on 16.04.2001 and 21.06.2001 wherein he has deposed that as the processing charges are low they could not pay the central excise duty for the processed fabrics and also stated that the parties were not interested in paying duty for fabrics processed. They have also been forced to clear small portion of processed fabrics without payment of duty. He confirmed the white sheets seized in the premises of SCM containing the particulars of processed fabrics and also contain the signature of Shri C. Manikandan and his brother Shri Varadarajan for getting the processing charges on the fabrics processed and delivered to SCM. He also stated that they have cleared approximately 1000 to 1500 mtrs. of fabrics per month without payment of central excise duty. He deposed that from January,1997 to April, 1998 they have processed and cleared the fabrics only after the payment of duty. Since the

market was very poor afterwards and as the parties insisted for processing without payment of duty and raised invoices for limited quantity and assured that such lapses would not happen in future.

3. Investigating officers conducted detailed search and follow up actions visited the premises of various suppliers of grey fabrics and also visited SCM on 07.03.2001 and verified the records in the presence of Shri K.R. Senthil kumar, Proprietor of SCM and also recorded his statement. He also admitted that they are getting grey fabrics processed from the respondent unit from 1991-1997 onwards. He also admitted that they received the processed fabrics from the respondent without payment of duty and without central excise invoices and occasionally respondent used to deliver the processed fabrics with central excise invoices and also admitted that Shri C.Manikandan used to accompany the van and they used to pay the job charges to him after taking the delivery of the fabrics and also after getting his signature on a white paper.

4. Officers also visited the premises of M/s. A.P.& Sons and verified the records and recorded statement from Shri P. Murugesan, Managing Partner dated 09.03.2001. He deposed in his statement that they used to send grey fabrics and get it processed from the respondent unit. He also admitted in his statement that the respondents used to issue central excise bills on some occasions and also returned the processed fabrics without bills in most of the cases. Officers also seized 4630 mtrs of processed fabrics under mahazar on the reasonable belief that the said fabrics has been processed by the respondent unit without accounting and cleared without documents and without payment of duty. Shri P. Murugesan, in his statement clearly deposed that they used to pay job charges @ Rs. 8 to 10 per mtr. for dyeing and @ Rs. 6 for bleaching to the respondent, when they raise bills but they used to pay only Rs. @3.50 for dyeing and Rs. 2.40 per mtr. for bleaching without bills. He also admitted that they processed approximately 10,000 mtrs per month from the respondent from 1997-98 to 1999-2000 and in 2000-2001 they have processed 30000 mtrs. fabrics per month and settled the job charges (with or without bills). He also admitted that they have not sent the fabrics with delivery challan and also admitted that the respondent used send the fabrics along with white paper containing the particulars of colors of fabrics and quantity thereof. Shri C. Manikandan who used to come and collect the job charges and they destroy all the white papers given by the respondent. He also admitted that during March 2001 they have sent 10240 mtrs. of gada fabrics to the respondent and they returned 11060.30 mtrs. of processed fabrics in the Matador var No. TN 27 E 1854 on 06.03.2001, which was seized by the officers under mahazar.

5. Officers also recorded statement from Shri J. Manoharan on 27.03.2001, Owner of the van and Shri P. Subramaniam, Proprietor of Shri Balaji Fabrics. On completion of investigation, a show cause notice was issued to the respondent proposing demand of central excise duty of Rs. 22,05,090/- on the dyed woven cotton fabrics as detailed in annexure-3 of the show cause notice under proviso to Section 11A and also proposed penalty under Rule 173Q read with Rule 25 and under Section 11AC and also demand of interest. Show cause notice also proposes for confiscation of 11069 mts. of dyed cotton woven fabrics valued Rs. 2,49,059/- seized under mahazar on 06.03.2001 and demanded duty of Rs. 39,850/- and appropriation of duty already paid. Show cause notice was also issued to M/s.AP.& Sons proposing confiscation of 4630 mtrs. of dyed woven fabrics valued at Rs. 94,915/- appeared to have been processed by the respondents and cleared without payment of duty seized under mahazar on 09.03.2001 and also proposed for penalty. SCN was also issued to Shri S. Rajasekaran, Managing partner of the respondent company, Shri J. Manoharan, owner of the van, Shri A.Pavun, driver of the van for penalty under Rule 209A read with Rule 26 of CER, 2001.

6. Commissioner Central Excise, Coimbatore in the impugned order dropped further proceedings in respect of excise duty demanded on the clandestine removal of goods except on 11069.30 mtrs. dyed woven fabrics seized under mahazar on 06.03.2001. He confirmed the duty of Rs.39,850/- and also appropriated the duty already paid by the respondent and imposed equal penalty of Rs. 39,850/- on the respondent under Rule 173Q and under Rule 25 and under Section 11AC. He ordered for confiscation of the seized fabrics and imposed redemption fine of Rs. 20,000/- and appropriated a sum of Rs. 20,000 from the security already deposited. He ordered for unconditional release and seized goods of 4630 mtrs. of dyed woven fabrics valued at Rs. 94,915/- to M/s. AP & Sons. He also ordered confiscation of the van valued at Rs. 1,50,000/- and ordered appropriation of Rs. 15,000/- towards fine and imposed penalty of Rs. 10,000/- on Shri R. Rajasekaran under Section 38A of the CEA,1944 read with Rule 26 of CER,2001. And imposed a penalty of Rs.5000/- on Shri C.A. Pavun, Driver of the van under Rule 209A. CBEC reviewed the said order and Revenue preferred appeal against dropping of proceedings.

7. Ld. AR on behalf of the Revenue reiterated the grounds of appeal. He submits that detailed investigation was carried out by the Preventive wing of the Commissionerate and detailed statements were recorded from the respondent and other persons. It is clearly brought out at page-4 of the OIO in para 8 (i) and (ii) and various statements recorded from the suppliers of grey fabrics and documents recovered from SCM and AP & Sons clearly confirms the modus operandi adopted by the respondent for clearance of dyed woven cotton fabrics clandestinely without accounting and without payment of central excise duty. The lot register recovered from SCM clearly proves the quantity of grey fabrics sent to the respondent unit. Two files containing white papers recovered at the premises of SCM issued by the respondent contained the details of process carried out and amount collected on the fabrics

supplied by SCM. He further submits that statement by the Managing Partner Shri R. Rajashekarani clearly admitted the clandestine removal of processed fabrics and he is fully aware of the entire modus operandi.

8. He further submits that the entire operation was carried out with intention to evade payment of duty and they ensured that all the documents are destroyed once the transaction is completed. The Commissioner has not taken into consideration the details of processed fabrics received by SCM and AP& Sons and not considered the evidences relied by the department and also white papers bearing the signature of Shri C. Manikandan, employee of the respondent company where he signed as cash received. White paper also contain the quantity, colour of the processed fabrics. He submits that the department has established beyond doubt. In the case of clandestine removal, Department is not required to establish with clear evidence as the respondent deliberately destroyed the records and preponderant of evidence is sufficient. He relied on the following case laws in support of his contention:

1. Gulabchand Silk Mills Pvt. Ltd. Vs. CCE, Hyderabad-II
2005 (184) ELT 263 (Tri.-Bang.)
2. CCE, Mumbai Vs. Kalvert Foods India Pvt. Ltd.
2011 (270) ELT 643 (S.C.)
3. G.K. Mittal Vs. CCE, Noida
2012 (284) ELT 355 (Tri.-Del.)
4. Surjeet Singh Chhabra Vs. UOI
1997 (89) ELT 646 (S.C.)
5. Maganlal Gulabchand Shah Vs. UOI
1992 (*59) ELT 235 (Guj.)
6. Poonam Plastic Industries Vs. Collector of Customs
1989 (39) ELT 634 (Tri.)
7. Bute Cosmetics Vs. CCE, Trichy
2001 (135) ELT 886 (Tri.-Chen.)

9. On the other hand the Ld. Advocate for the respondent reiterated the findings in the impugned order and also reiterated the grounds made in the cross appeal filed by them. The adjudicating authority rightly dropped the proceedings. He submits that entire case has been made out by the department based on the statements recorded from various persons and no corroborative evidences or witnesses produced. The statements recorded were also retracted subsequently. Statement of Shri C. Manikandan was relied by the department but he never stated that the respondent cleared the goods without payment of duty. He also never stated anything about past clearances. Since most of the persons from whom the statement was recorded were retracted subsequently. There is no evidence of clandestine removal. He submits that the records, loose sheets and white papers recovered by the department from SCM did not mention any transaction of the respondent unit. He disputed the quantity arrived by the department based on the loose sheets and the value adopted by the department is arbitrary on the alleged clearance of processed fabrics and the quantity shown in the work sheet is wrong. The department erroneously indicated excess quantity of 7661.15 mtrs. shown in respect of SCM for 2000-2001. He also submits that excise duty demanded @ 24% for the year 2000-2001 (16%BED and 8% ADE) whereas the correct rate of duty is 16% (8% BED and 8% ADE). He further submits that the quantity of clandestine removal to AP & Sons as shown by the department for the year 2000-2001 accounted excess quantity of 10608 mtrs whereas as per their invoices accounted quantity is 21677 mtrs. Department has also demanded excise duty on the seized quantity of 11069.30 twice as the adjudicating authority separately confirmed the duty and appropriated.

10. He further submits that Revenue has filed appeal only against the respondent and not preferred appeal against other co-noticees, who were implicated in the SCN. Revenue appeal is only on the demand dropped on the respondent on the clearances of processed fabrics to SCM and AP & Sons. He relied upon the following case laws in support of his contention.

1. Sanket Food Products Pvt. Ltd.Vs.CCE

2005 (188) ELT 107 (Tri.)

2. Premium Packaging Pvt.Ltd. Vs. CCE

2005 (184) ELT 165 (Tri.)

3. Rama Shyama Papers Ltd.Vs. CCE

2004 (168) ELT 494 (Tri.-Del)

4. Kumar Cotton Mills Pvt. Ltd. Vs. CCE

2008 (229) ELT 273 (Tri.-Ahmd.)

11. I have carefully considered the submissions of both the sides and perused the records and grounds of appeal where the Revenue filed appeal against dropping of the proceedings. On perusal of the SCN dated 17.07.2001 I find that excise duty of Rs.22,05,090/- on the dyed woven fabrics removed without payment of duty during the period from 1996-97 to 2000-2001 as per the Annexure III to the SCN. The adjudicating authority in the impugned order dropped the major demand and confirmed duty of Rs.39,850/- in respect of seized goods of 11069.30 mtrs. and imposed redemption fine of Rs. 20,000/- on the confiscated goods seized under mahazar and Rs.15,000/- on the owner of the vehicle and also imposed a penalty of R. 39,850/- on the respondent and Rs. 10,000/- on Shri R. Rajasekharan, Managing Partner and Rs. 5,000/- on Shri A. Pavun, driver of the van.

12. I find from the SCN that there are five co-noticees namely, M/s. Sindu Cotton Mills (SCM), AP & Sons, Shri S. Rajasekaran, Shri C.A. Pavun, Shri J. Manoharan. The Revenue appeal is only against the respondent M/s. Sree Srinivas Processing. Revenues main grounds of appeal is against the order dropping the demand proceedings on the alleged clandestine removal of processed fabrics by the respondent. Therefore, I proceed to discuss the Revenue appeal only in respect of M/s. Sree Srinivasa Processing, (the respondent), dropping of demand of Rs. 22,05,090/- and penalty on them.

13. On perusal of records, I find that the department has carried out extensive investigation subsequent to seizure of dyed cotton woven fabrics of 11069.30 mtrs. valued Rs.2,49,059/- pertaining to the respondent unit without valid documents transported in a matador van on 6.3.2001 and intercepted in transit check. Shri C. Manikandan, an employee of the respondent company accompanied the said van containing the dyed woven fabrics. After seizure statements were recorded from Shri C. Manikandan, Shri R. Rajasekharan, Managing partner of the respondent company, Shri A.C. Pavun, driver and other individuals. Systematic follow up action carried out by the investigating officers right from interception of the vehicle on 06.03.2001. Officers visited the respondents unit on the same day and verified the records and recorded statement from Shri S. Rajasekharan, Managing Partner of the respondent company. On 07.03.2001, the officers visited SCM, who supplied grey fabrics and recorded statements from Shri K.R. Senthil Kumar, Proprietor of SCM, and on 9.3.2001 visited another supplier of grey fabrics M/s. AP & Sons, Erode, verified the records and recorded statement from Shri P.

Murugesan, Managing Partner of AP & Sons. Statements also recorded from Shri P. Subramaniam, Proprietor of M/s. Sree Balaji Fabrics on 29.06.2001 and from the owner of the vehicle Shri J. Manoharan, and from Shri C.A. Pavun, Driver of the vehicle. The investigation established clandestine removal of goods by recovery of private records from SCM, AP & Sons and Sree Balaji Fabrics etc., and from the respondent unit.

14. The adjudicating authority without examining the evidences and documents and statements, dropped the demand of Rs.22,05,090/- and held that the department has not proved the clandestine removal of the processed fabrics with any corroborative evidence and the SCN was issued only on the basis of the statements recorded, which were retracted subsequently. He also stated that it is the duty of the department to prove the case of clandestine removal with appropriate evidence and not by surmises.

15. The lower authority's findings is not well founded for the reasons that the entire investigation emanated from the seizure of dyed cotton woven fabrics of 11069.30 mtrs. clandestinely removed from the respondents unit without any valid documents and without payment of central excise duty, which is not in dispute. It is clearly brought out in the investigation that Shri C. Manikandan, an employee of the respondent company had accompanied the said goods for delivery to SCM and his signature was found in the white papers relating to past clearances. The adjudicating authority failed to consider the vital statements recorded from Shri R. Rajasekaran, who is the Managing Partner of the respondent company and Shri K.R Senthil Kumar, Proprietor of SCM and statement of Shri P. Murugesan, Managing Partner of AP & Sons, the top persons who manage the entire activities. Statements were recorded on 06.03.01, 16.04.01 and 21.06.01 from Shri R. Rajasekaran, who voluntarily admitted that the goods under seizure were cleared without accounting and without payment of duty and also admitted that they were supplying the processed fabrics to both SCM and AP & Sons in the past from 1997-98 onwards. He clearly admitted that initially during the period 1997-1998 they used to clear the processed fabrics only on payment of duty under central excise invoices and subsequently due to severe market crunch, suppliers insisted them for processing grey fabrics without payment of duty and they have been forced to processing fabrics without payment of duty and raised invoices only for a limited quantity. He not only admitted that the clearance of processed fabrics without payment of duty and also deposed that approximate quantity of 1000 to 1500 mtrs. of fabrics were processed per day and delivered without payment of duty. He is fully aware of the day to day activities of the respondent unit and his statement is fully corroborated with the white sheets, ledger recovered from SCM etc. The adjudicating authority failed to take note of the above statement of Shri R. Rajasekaran, Managing partner of the respondent unit, which is supported by other statements and records.

16. Further I find that the department clearly established the receipt of non duty paid processed fabrics by SCM. On perusal of copies of white paper dated 07.04.2000 which clearly shows the supply of 1005.01 mts. and it is duly signed by Shri C. Manikandan for delivery of goods and cash received. Another white paper shown the quantity of 2192.90 mtrs. of processed fabrics delivered to SCM and he signed and endorsed cash receipt of Rs. 5709/- This confirms that Shri C. Manikandan, who is the main person handling all purchases and delivery of the finished goods had not only delivered the goods personally to the suppliers but also signed on the white papers as proof of delivery and receipt of amount. All such papers relied by the department bears the signature of Shri C. Manikandan and it clearly shows the description of goods and quantity of processed fabrics delivered and cash received. These vital evidences were not discussed by the adjudicating authority. Therefore, the department has clearly brought out in the SCN clandestine clearance of processed fabrics without payment of duty with connivance of the suppliers ie., SCM and AP & Sons through their employee.

17. It is also pertinent to state that the statements of Shri K.P. Senthil kumar, Proprietor of SCM and Shri P. Murugesan, Managing Partner of AP & Sons were clearly overlooked by the adjudicating authority. In their statements they have categorically admitted clandestine operation as already deposed by Shri R. Rajasekaran, Managing Partner of the respondent company in his statement. They have not only admitted that they used to send fabrics to the respondent unit for processing and received the processed fabrics without bills but also confirmed that they used to pay the job charges to Shri C. Manikandan, after getting signature on the white sheets. This clearly confirms modus operandi adopted by the respondent unit in connivance of the suppliers. Shri P. Murugesan, Managing Partner, in his statement clearly admitted that they used to send grey fabrics to the respondent unit and receive processed fabrics and they used to pay at different rates depending on whether the goods with bills or without bills. In the case of processed fabrics received with bills / invoices they paid, Rs. 8 to 10 per mtr. for dyeing and Rs. 6 for bleaching and for goods received without bills, they paid Rs.3.50 for dyeing and Rs. 2.40 for bleaching. These facts clearly prove the well established modus operandi for clandestine removal by the respondent.

18. The statements of Shri R. Rajasekaran, Shri K.P. Senthil Kumar and Shri P. Murugesan are of vital importance in establishing the case and all the three are managing their respective company and they are fully aware of their day to day transactions between the respondent. Any statements recorded before the central excise officer is a valid evidence and it cannot be said to be coercive. The Honble

Supreme Court in the case of CCE Mumbai Vs. Kalvert Foods India Pvt. Ltd. (supra) has clearly held that statement recorded by officers only be made with personal knowledge and not obtained through coercion or duress or through dictation. Relevant portion of the said decision is reproduced as under:-

18. During the course of arguments learned counsel appearing for the respondent submitted before us that although the aforesaid statements of Managing Director of the Company and other persons were recorded during the course of judicial proceedings but the same were retracted statements, and therefore, they cannot be relied upon. However, the statements were recorded by the Central Excise Officers and they were not police officers. Therefore, such statements made by the Managing Director of the Company and other persons containing all the details about the functioning of the company which could be made only with personal knowledge of the respondents and therefore could not have been obtained through coercion or duress or through dictation. We see no reason why the aforesaid statements made in the circumstances of the case should not be considered, looked into and relied upon.

19. We are of the considered opinion that it is established from the record that the aforesaid statements were given by the concerned persons out of their own volition and there is no allegation of threat, force, coercion, duress or pressure being utilized by the officers to extract the statements which corroborated each other. Besides, the Managing Director of the Company on his own volition deposited the amount of Rs. 11 lakhs towards excise duty and therefore in the facts and circumstance of the present case, the aforesaid statement of the counsel for the respondents cannot be accepted. This fact clearly proves the conclusion that the statements of the concerned persons were of their volition and not outcome of any duress.

The ratio of the Honble Apex Court decision squarely applicable to the present case and the statements recorded from the Managing Partner and also from the Proprietor of SCM and Managing partner of AP & Sons, cannot be said to be recorded in duress or by force. These statements were voluntarily made by the deponents before the central excise officers. Even if any of the statements were retracted subsequently, it cannot be held as invalid as in the instant case none of the statements were retracted immediately. In the case of clandestine removal as evident from their modus operandi as discussed above, the respondent had cleverly master minded with the connivance of SCM and AP & Sons for clearance of the processed fabrics without accounting in their records without payment of duty and ensured all evidences are destroyed immediately after the transaction is complete. The department had clearly established from interception of van carrying fabrics and seizure of 11069.30 mts. dyed woven fabrics cleared without payment of duty and established past clearances with the ledgers, private records, white sheets and white papers of the respondent co. These white papers are not unsigned

papers but they contain the details of quantity, colour and amount which are duly signed by Shri C. Manikandan, which was recovered from the supplier confirms the delivery of the processed fabrics and receipt of job charges in cash.

19. In this regard Honble Supreme Court in the case of Collector of customs Madras and Others Vs. D. Bhoormull 1983 (13) ELT 1546 (S.C.) clearly held that the department is not required to prove its case with mathematical precision but required to establish the existence of the facts in issue. The relevant portion of the said decision is reproduced as under:

30. It cannot be disputed that in proceedings for imposing penalties under clause (8) of Section 167, to which Section 178A does not apply, the burden of proving that the goods are smuggled goods, is on the Department. This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, or universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it-"all exactness is a fake". El Dorado of absolute Proof being unattainable, the law, accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent mans estimate as to the probabilities of the case.

31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered to use the words of Lord Mansfield in *Blatch v. Archar* (1774) 1 Cowp. 63 at p. 65 According to the Proof which it was in the power of one side to prove and in the power of the other to have contradicted. Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.

The ratio of the above decision is squarely applicable to the facts of the present case as the department in the present case is clearly proved and established the clandestine removal and proved their case and the burden of proof is on the respondent to prove otherwise.

20. Further, in the case of Gulabchand Silk Mills Pvt. Ltd. (supra) the Honble Tribunal clearly held that clandestine activity can be best established by circumstantial evidence and it is humanly impossible to establish every link in the chain of clandestine activity. The ratio of the above decisions squarely relevant to the present case. By respectfully following the above judgements, I hold that the adjudicating authority apparently failed to consider all the above evidences and ignored the specific allegations brought out in the SCN particularly when the respondent clandestine removal of goods was caught red handed during the road check itself is an undisputed evidence corroborated with past clearance by same modus operandi by the same employee engaged by the respondent. It is established beyond doubt the malafide intention to evade payment of duty by the respondent. Recovery of white sheets, ledger, private records for past clearances confirms that the respondent used to clear the fabrics without payment of duty which is duly authenticated by the signature of the employee Shri C. Manikandan. It also confirms that the respondents are habitual in clearing the goods without payment of duty and without valid invoices and occasionally with payment of duty. Three top persons of the respondent companies and the suppliers namely Shri R. Rajendran, Shri K.R. Senthil Kumar and Shri P. Murugesan had clearly admitted the above facts. Therefore, I hold that the adjudicating authority without considering all these facts came to the conclusion that the department failed to establish with corroborative evidence which is totally not justified. For the aforesaid reasons and on the material available on record which is supported by the statements, it is established beyond doubt of the clandestine removal of excisable goods without accounting and without payment of duty and without any valid documents. Accordingly, impugned order is liable to be set aside to the extent of dropping the excise duty demand of Rs. 22,05,090/- on the goods cleared for the period from 1996-97 to 2000 to 2001 (upto 6.3.2001).

21. The respondent in their cross objection pleaded that they are eligible for cum-tax benefit and they are eligible for modvat credit. Respondent also disputed Annexure-3 of the SCN on total quantity arrived by the department for the year 2000-2001 and also contended that Revenue charged higher rate of duty of 24% for the year 2000-2001 instead of 16% (8% BED and 8% ADE).

22. (i) On allowing cum tax benefit I find that once it is held that the respondents are liable for payment of excise duty on the dyed fabrics and collected the charges from the suppliers the respondents are eligible for cum tax benefit on price charged from their suppliers. I allow cum tax benefit on the total value. The lower authority to requantify the amount as above.

(ii) The respondents second plea is on the wrong adoption of higher rate of duty in respect of the quantity cleared for the year 2000-2001. On perusal of Notification No. 17/2000-CE dated 01.03.2000, I find that correct rate of duty chargeable is @ 16% (8% BED and 8% ADE) and not 24% (16% BED and 8% ADE) as indicated in SCN. Lower authority to redetermine the demand. Accordingly, I hold that the revised duty @ 16% (BED 8% + AED 8%) is applicable for the year 2000-2001 and same is liable for confirmation at the revised amount. The lower authority is directed to recompute the duty amount to the extent indicated above.

(iii) As regards the quantity, the respondents plea that during 2000-2001 the duty has been demanded on excess quantity of 7661 MT fabrics cleared in 2000-2001 to SCM. As per Annexure-III of SCN the quantity shown as per invoice is 16964 MT whereas the correct quantity entered as per RG-I register was 24625.15 MT. Since the RGI register is a statutory record and if the correct quantity indicated in RGI account (as on 06.03.2001) is 24625.15 MT the quantity shown in Annexure-III as 16964 MTs is liable to be revised subject to verification of the RGI records by the lower authority and if found correct the differential duty on excess quantity of 7661.15 MT is liable to be excluded.

(iv) The respondents other contention in respect of quantity accounted for the clearance made to AP & Sons that duty has been demanded twice on the seized quantity. I find from Annexure-III to the SCN, the quantity has been correctly computed and the respondents have not come out with any clear evidence. Therefore, the same is liable for rejection.

(v) As regards respondents contention on the value adopted for demanding duty, I do not find any justification on the respondent claim and as seen from Annexure-III I find that the department has correctly computed the value as per the charges collected by the respondents and for each year taking minimum of Rs. 16.65 per mtr. to maximum of Rs. 24.68 per mtrs. for different years.

(vi) Similarly respondents claim for modvat benefit on the input credit, I hold that they are not eligible for modvat benefit as this is a clear case of clandestine removal with wilful suppression of facts with contention to evade excise duty. Therefore their plea is liable for rejection.

23. In view of the aforesaid discussions and by respectfully following the Apex Court decisions discussed in the preceding paragraphs, the impugned order is set aside to the extent of dropping of demand and the demand is upheld as under:-

(i) Demand raised in the SCN dated 17.07.2001 is confirmed after allowing the cum-tax benefit and after applying correct rate of duty for 2000-2001 as directed at para 22 (ii) and on revised quantity for 2000-2001 in respect of clearance of goods to SCM as directed at para 22 (iii) above.

(ii) Demand of interest is confirmed under Section 11AB on the revised demand.

(iii) Penalty imposed on the respondent M/s. SSP under Rule 173 Q of CER read with Rule 25 of CER under Section 11AC of CE Act equivalent to the revised demand.

The adjudicating authority is directed to requantify the demand amount as ordered above within 60 days from the date of receipt of this order. On such redetermined amount the respondent shall pay the penalty as ordered at 22 (iii) above and also eligible for reduced penalty as per the proviso to Section 11AC of the Central Excise Act. The cross objection filed by the respondent is disposed of. The Revenue appeal is allowed in the above terms.

(Order pronounced in the Open Court on 22.05.2015)

(R. PERIASAMI)

TECHNICAL MEMBER