

**The Commissioner of Central Vs. Balkrishna Textile Pvt. Ltd.**

**The Commissioner of Central Vs. Balkrishna Textile Pvt. Ltd.**

**SooperKanoon Citation :** [sooperkanoon.com/36062](http://sooperkanoon.com/36062)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Jul-26-2004

**Reported in :** (2005)(178)ELT984Tri(Mum.)bai

**Judge :** M T K.D.

**Appellant :** The Commissioner of Central

**Respondent :** Balkrishna Textile Pvt. Ltd.

**Judgement :**

1. This is revenue appeal against the order-in-appeal passed by the Commissioner of Customs who set aside the order passed by the Assistant Commissioner and allowed the appeal filed by the respondents. In the order-in-original, the Assistant Commissioner confirmed the duty demand of Rs. 5,22,118/- and imposed a penalty of Rs. 51,500/-. The grounds for demanding the duty are that the respondents, who are the manufacturer of cotton fabrics, sent partly processed fabrics from their units to outside premises for undertaking the job work. The respondents carried out process like bleaching, dyeing, printing in their factory and thereafter, removed such semi finished fabrics for further processes like carbonising, heat settings, etc. on full payment of duty. The job worker on receipt of the fabrics took credit of duty paid by the respondents in his RG 23A Part-II account and that of fabrics in RG23 Part-I account. The job worker, after doing the required processes, sent back the fabrics to the respondents adding his job charges in the original clearance value and after payment of full rate of duty. The respondents, on receipt of such fabrics from the job worker accompanied by duty

paying documents took credit of duty paid by the job workers in his modvat account. The respondents after doing certain process like padding, stentering and calendaring, zero zero process, etc. cleared the fabrics finally on availing the benefit of deemed credit on final clearance value.

2. The demand was confirmed against the respondents on the ground that in terms of explanation appended to Notification No. 29/96-CE(NT) dated 03/09/96, the respondents are not entitled to take the benefit of deemed credit where the processed fabrics itself is used as an input for further processing. It is claimed that since the fabrics received from the job worker is no longer a grey fabrics but is a processed fabrics, the respondents were not entitled to take the credit of duty paid on the processed fabrics for utilising the same for payment of duty of the fabrics eventually cleared for market sale from their factory.

3. The Commissioner (Appeals) while dealing with the appeal of the respondents against the order of the Assistant Commissioner observed that, the job worker had undertaken the process of washing of the fabrics and after adding his job charges and paying duty on the same, the job worker cleared the said goods to the appellants on payment of duty, showing that the goods were semi-finished. After receiving the fabrics from the job workers, the appellants had undertaken the processes of stentering on stenter machine and after doing the final process including the folding and packing they had sent the goods to the respective customers.

"I find that the appellants have been denied the deemed credit as per Explanation-II appended to Notification No. 29/96-CE (NT) dated 23/09/96. This explanation states that the benefit of this Notification shall not apply in cases where the processed goods itself are used as inputs. The lower authority has held that since the appellants are using processed fabrics for further processing and clearing the same to the merchant manufacturers exporters and claiming the deemed credit, the same is not admissible to them.

However, I find from the perusal of the invoices issued by the job worker Shree Krishna Processors, who had done the job work on the fabrics and sent back the fabrics after processing to the appellants, there is a remark on the invoices stating

"semi processed goods sent for further processing and final clearance will be from Balkrishna Textiles Pvt Ltd.". The appellants after receiving back the goods from this job worker have carried out the processes, like padding, stentering and calendaring, zero zero etc.

on these fabrics and thereafter they have finally cleared the goods from their factory. Therefore, it is evident that the appellants had used semi processed fabrics and inputs and not the fully processed fabrics and the benefit of deemed credit is legally admissible to them. I find that the appellants in another case had sent certain semi finished processed fabrics for further processing to M/s. Prem Industries and M/s. Prem Industries after doing further processing finally cleared the fabrics claiming deemed credit and the Assistant Commissioner, Central Excise, Division-I vide OIO No. 57/De./99 dated 29/01/99 has held that the fabrics sent by M/s. Balkrishna Textiles Pvt Ltd., to M/s. Prem Industries were semi finished fabrics and not processed fabrics and therefore the bar of Explanation-II does not apply in their case and accordingly allowed the deemed credit to M/s. Prem Industries. The similar situation is prevailing in this case and it is established beyond doubt that the appellants had used semi finished fabrics for further processing and not the processed fabrics, therefore, the deemed credit under the said notification has been wrongly denied to them".

5. The revenue appeal challenges the findings of the Commissioner (Appeals) by simply re-iterating the contents of the order-in-original without giving any clear cut counter to the findings of the Commissioner (Appeals).

7. It is noted that, here the respondents received grey fabrics for undertaking certain processes. After completing some processes in their factory these are sent out to job worker. The Commissioner (Appeals) has observed that, job working only involved the process of washing, though the facts enumerated in the adjudication order, talks about the job worker having undertaken the process of heat setting and carbonising also. The respondents claimed that, the despatch to job worker was only for washing, they could not show from the challans that the process of only washing was involved. It is stated that, because the inputs received from the job worker are not grey fabrics, but the fabrics which have

undergone processing, in terms of Explanation-II to the Notification, the "processed fabrics" themselves being the input, the Notification No. 29/96-CE(NT) will not apply, in respect of duty payment at the point of clearance of finally processed fabrics to the customers.

8. I have critically examined the issue. In this case, notification does not define as to what is the scope of the term "input". The respondent is a manufacturer of processed fabrics. Therefore, grey fabric is an input, which is received from his customers. He then subjects this inputs to partial processes within his factory. The remaining processes are undertaken in the outside premises and such, further processed fabrics are again received back into the respondent's factory for carrying out the ultimate and remaining processes.

Throughout these transactions, the initial grey fabric continues to be an input. The respondents are not receiving partly processed fabrics in their factory as initial input. The input was received by them initially in the form of grey fabrics only, from the respective customers. Therefore, the second entry of part processed fabrics from the job worker's premises cannot be treated to be the entry of a different input than the input which was initially received from the supplier (Customer). In other words, in my view, the second time entry (re-entry) can not be treated as a receipt of input for the purposes of Explanation-II. In my view the Explanation-II can apply only where there is a direct supply from the customers to the respondents in the form of partly processed duty paid fabrics. In this case, the respondents having received "grey fabrics" initially, notwithstanding the intermediate processes carried out by the job workers outside the factory, such intermediate processing and receipt of such processed fabrics would not come in way of availment of deemed credit.

9. The view as proposed in the revenue appeal will lead to total discrimination between the processors who complete the entire processing of fabrics from grey stage as against the processors who farm out a part processing work to outside parties. It is also a fact of life that due to controls imposed on industrial pollution, the processors are required to restrict the processing operations to certain processes only and send out the fabrics outside the factory for remaining or

intermediate processing. Washing of dyed/printed and bleached fabrics, has to be localised in certain areas only. Therefore, the law should not be interpreted in favour of the fortunate ones, who have the entire range of processing facilities within their factory. On the principle of equity, the tax result should be the same, whether or not the processing is integrated or unintegrated.

10. The argument of Commissioner (Appeals) that the goods being "semi finished" and hence not an input has no relevance to the dispute in the instant case since the term "input" can cover even the semi finished goods. Notwithstanding this, as discussed above, since the second entry of the goods from the job workers is held by one to be not coming in the way of taking of deemed credit, the order passed by Commissioner (Appeals) is sustainable.

11. Accordingly, I find no merit in the revenue's appeal and the same is rejected.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**