CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, AHMEDABAD
O/20, New Mental Hospital Compound, Meghani Nagar, AHMEDABAD -380016
TELEPHONE NO. 079- 22683202 FAX NO.079- 22683276

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File NO. — C/154-171/2009

Date: 9th MARCH, 2011

From: THE ASSISTANT REGISTRAR, CESTAT, AHMEDABAD
In the matter of

ARVIND LTD.
NARODA ROAD,
AHMEDABAD-380025.

APPELLANT

22 MAR 2011

Vs

RESPONDENT

CC,AHMEDABAD
CC, AHMEDABAD - Commissioner of Customs, Customs House, Navrangpura, Ahmedabad - 380009

I am directed to transmit herewith a certified copy of **Order No. A/412-429/WZB/AHD/2011 Dated 24.02.2011** passed by the Tribunal under Section 35(1) of the Central Excise Act, 1944, Section 129(B) of the Customs Act, 1962 and Finance Act, 1944.

ASSISTANT REGISTRAR

Copy to :
(1). Chief Commissioner Customs ~~& Central Excise~~ : AHMEDABAD
(2). Commissioner Customs ~~& Central Excise~~ (Appeal) : AHMEDABAD
~~(3).~~ Jt. CDR CESTAT, Ahmedabad
(4).CESTAT Bar Association, Ahmedabad
(5). CESTAT Bar Association, New Delhi
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(12). Lawcrux Advisors Pvt. Ltd. Ltd
(13). Taxindiaonline.com Pvt Ltd
(14). Advocate/ Consultant

SH V SRIDHARAN , ADV
C/O SH S J VYAS, ADV
C-4, JAY APPARTMENTS
OPP- AZAD SOCIETY
AMBAWADI, AHMEDABAD-380015

ASSISTANT REGISTRAR

DB-D-16

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

COURT-II

Appeal No.C/154 – 171/09

Arising out of OIA No.33 to 50/2009/Cus/Commr(A)/AHD, dt.26.02.09

Passed by: Commissioner of Central Excise & Customs (Appeals), Ahmedabad

For approval and signature:
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B.S.V. Murthy, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Departmental authorities?	Yes

Appellant/s	...	M/s. Arvind Ltd.
Represented by	...	Shri V. Sridharan, Adv
		Vs.
Respondent/s	...	CC Ahmedabad
Represented by	...	Shri R. Nagar, SDR

CORAM:
MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
MR. B.S.V. MURTHY, MEMBER (TECHNICAL)

Date of Hearing :24.02.11
Date of Decision:24.02.11

ORDER No. A/412- 429/WZB/AHD/2011

Per: Mrs. Archana Wadhwa:

All the appeals are being disposed off by a common order as they arise out of the same impugned order passed by Commissioner (Appeals).

2. As per facts on record the appellant imported Vat Indigo Blue falling under Customs Tariff Heading 3204 15 59. Some of the consignments were cleared by them on payment of counter ~~Billing~~ vailing duty, in respect of which benefit of exemption Notification No.04/2006-CE dated 01.03.2996 was claimed by them subsequently by way of filing appeals before Commissioner (Appeals) against the assessment orders. In some cases the appellant claimed the benefit of the notification at the time of importation itself, which stands rejected by the original adjudicating authority by way of passing reasoned and speaking orders. All the appeals filed by the appellant stand rejected by Commissioner (Appeals). Hence the present appeals.

3. The short issue involved in the present appeals is as to whether Vat Indigo Blue imported by the appellant are entitled to the benefit of exemption in respect of CVD, in terms of Sr. No.67 of Notification No.4/2006-CE dated 01.03.2006. For ready reference the said Sr. No. is reproduced below:

S. No.	*Chapter or heading or sub-heading or tariff item of the First Schedule*	*Description of excisable goods*	*Rate*	*Condition*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
67.	*3204 or 3809*	***Finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs, printing paste and other products and preparations of any kind used in the same factory for the***	***Nil***	-

		manufacture of textiles and textile articles.		

4. The appellants strongly contended before the authorities below that the issue is covered by the earlier decision of the Tribunal in the case of **Malva Industries Ltd. Vs. CC Amritsar** reported in **2008 (229) ELT 233 (Tri. - Del.)**. The said order of the Tribunal stands merged with the order of the Hon'ble Supreme Court, when the appeal filed by the Revenue against the Tribunal's order was rejected by the Hon'ble Supreme Court as reported in **2009-TIOL-17-SC-CX.** However the said decision of the Tribunal does not stand followed by Commissioner (Appeals) on the ground that the same did not discuss the issue from the angle as to whether Vat Indigo Blue is covered by the description of the excisable goods, as appearing against Sr. No.67 of the notification in question. The issue before the Tribunal as also before the Hon'ble Supreme Court was as to whether the benefit of the notification is available if the goods are imported and consumed in the factory of the importer or not. The Commissioner (Appeals) has observed that the said judgment of the Tribunal had not examined the core question whether Vat Indigo Blue by itself is covered under Sr.No.67 of Notification No.04/2006-CE or not. As such he went on to examine the above question and arrived at a finding that the said Vat Indigo Blue dye is not covered by the above Sr.No. of the notification and rejected the appeal.

5. After hearing both the sides duly represented by learned advocate, Shri V. Sridharan appearing for the appellant and learned DR, Shri R. Nagar appearing for the Revenue and after going through the impugned order of Commissioner (Appeals) we find that admittedly Vat Indigo Blue dye, imported by the appellant, is used by them in their factory for the

manufacture of textile and textile articles. In as much as the same is used for dying of denim clothes. Learned advocate appearing for the appellant submits that the said dye is covered by the expression – *and other products and preparations of any kind used in the same factory for the manufacture of textiles and textile articles.* In as much as the appellant satisfies the condition of classification of the imported product as falling under 3204, as also the description of the excisable goods, the claim of exemption is required to be allowed as per the appellant.

6. The above plea of the appellant stands rejected by the appellate authority by observing as under:

> **"It is therefore clear from the above description of items covered in Sr.No.67 that the exemption from CVD envisaged under the entry is available only to finishing agents, dye carriers falling under CTSH 3204 or 3809 used in the factory fro manufacture of textile and textile articles to accelerate the dyeing or fixing of (1) dye-stuffs, (2) printing paste and (3) other products and preparations of any kind. As already found above, the item 'Vat Indigo Blue falling under CTSH 3204 15 59 imported by the appellant being a Vat dye by itself, would not fit to the category of items described as finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs, printing paste and other products and preparations of any kind to be eligible for the benefit of Additional Duty exemption envisaged under Sr.No.67 of Notification No.4/2006-CE dated 1.3.2006.**
>
> **The appellant's contention is that the description "*other products*" appearing in Colmn.3 of Sr.No.67 would in effect sweep into its fold all the items/products of CTSH 3204 and 3809. If this contention of the appellant is admitted even for argument's sake, then all the words and description "*Finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs, printing paste and*" immediately preceding the words and description "*other products*" appearing in Column 3 against entry No.67 will become meaningless and thus redundant. In other words, if the entry No.67 of Notification No.4/2006-Cus was intended to cover all the products and preparations of CTSH 3204 and CTSH 3809 within its purview, then the entries "*All goods*" as appearing against various other entries of the same Notification would have been sufficient for the purpose. Any such interpretation of the Notification, which makes any of the entries/description ineffective, has to be rejected. I therefore, hold that 'Vat Indigo Blue' of CTSH 3204 15 59 imported by the appellant being a Vat Dye by itself would not fall in the category of goods of description contained in Sr.No.67 of Notification No.4/2006-CE dated 1.3.2006."**

7. As is seen from above, he has concluded that the expression *"other products and preparations of any kind"* has to be restricted only to the goods classifiable under Heading 3809. The same cannot be extended to all the products and preparations of chapter Heading 3204 in as much as the same would render the notification meaningless and redundant. He has observed that in as much as the entry does not specify "all goods", the Vat Dye imported by the appellant classifiable under Heading 3204 would not be covered by the said expression.

8. We find no merits in the above reasoning of the appellate authority. Admittedly Vat Dye falls under Customs Tariff Heading 3204, which is one of the specified tariff headings against Sr.No.67. The reference by the appellate authority to Tariff Heading 3809, to hold that the expression "other products and preparations" appearing in the notification only referred to the goods of the said heading cannot be appreciated in as much as there is nothing in Sr.No.67 of the notification in question to restrict the said expression appearing against Chapter Heading 3204 also to the goods of 3809 only. The Tariff Heading 3809 reads as follows:

> *"Finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included."*

As is seen from the above entry the expression used therein is – *"and other products and preparations (for example, dressings and mordants) of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included".* As against the above expression – *"of a kind used in the textile"* the expression appearing in the notification is – *and other products and preparations* ***of any kind*** *used in the same* *factory for the manufacture of textile and textile articles.* As such the reasoning of the lower authorities that the expression appearing under the ~~colour~~ description of excisable goods in the said notification essentially relate to the products falling under 3809 cannot be appreciated in as much as the use of expression – *"any kind"* against *"of a kind"* is wide enough to take into its ambit the products of Chapter Heading 3204 also. As such we are of the view that the Vat Indigo Blue Dye imported by appellant is covered by the notification.

9. In any case, we find that Commissioner of Customs (Appeals) Navasheva vide its Order-in-Appeal No.491 to 506 (Gr.IIA)/2009(JNCH) dated 30.09.09, subsequent to the present impugned order, has extended the benefit of the notification to the same appellant in respect of subsequent merits by observing as under:

> *I am in agreement with the view that the purpose of such additional duty was to provide for a level playing field for the Indian manufacturer, by taking the imported goods on the same basis as the goods manufactured in India. Therefore, if the goods manufactured in India were subject to exemption, then imported goods would be equally exempted from additional duty. The said goods were fully exempted under Sr.No.67 of the said notification and the condition that the goods must be used in the same factory where they are manufactured, would not apply to the imported goods, in view of the decision of Supreme Court in the case of Lohia Steel Products – 2008 (224) ELT 348 (S.C.). Further I find that the matter is directly covered by the Tribunal decision in the case of Malwa Industries Ltd. The Department's appeal against the said order was also rejected by Supreme Court as reported in 2009-TIOL-17-SC-CX. These facts have been ignored in the impugned assessments.*

10. Though we have independently arrived at a finding of availability of exemption in terms of the above notification we also take note of the earlier decision of the Tribunal in the case of **Malwa Industries Ltd.**, which stands confirmed by the Hon'ble Supreme Court as reported in **2009 (235) ELT 214 S.C.** It is seen that the Revenue, had no point of time, either before the Tribunal or before the Hon'ble Supreme Court

disputed the coverage of Vat Indigo Blue Dye under the description of the excisable goods appearing in Sr.No.67 of Notification No.4/2006. The only objection of the Revenue was that the imported goods are not being used **in the same factory** for the manufacture of textile and textile articles. It was on the interpretation of the above expression that an appeal was carried to the Hon'ble Supreme Court against the order of the Tribunal. The said plea of the Revenue was of course, rejected by the Tribunal as also by the Hon'ble Supreme Court. As such the Revenue, having accepted the coverage of Vat Indigo Blue Dye by the description of the goods, cannot be ~~now~~ allowed to take an altogether different ~~style~~ plea and contest the applicability of the notification on the basic issue of non coverage of the goods by the notification. It may be observed that having challenged the order of the Tribunal before Hon'ble Supreme Court on the limited ground of non use in the factory of manufacture, the Revenue is deemed to have otherwise accepted the fact that Vat Indigo Blue is covered by the description of the goods appearing in the notification.

11. In view of the above, the impugned order of Commissioner (Appeals) is set aside and all the appeals are allowed with consequential relief to the appellant.

(Pronounced in Court)

Sd/-
(B.S.V. Murthy)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

jk

Copy of the Order forwarded and
The Assessee/The Commissioner/The
DR., C.E.S.T.A.T.
TRUE COPY

Registrar
Customs, Excise & Service Tax
Appellate Tribunal

9 MAR 2011