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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH

O-20, Meghani Nagar, New Mental Hospital Compound Ahmedabad - 380 016.
(Tel. : 079-22683202) FAX NO. 079-22683276

(421)

File No. E/2/06. E/4102/05. E/873/07 Dated 11.3.08

From : THE ASSISTANT REGISTRAR, Cestat, Ahmedabad

To,
M/s. Ramshyam Prints
Narol - Vatva Road.
Ahmedabad

संयुक्त मुख्य विभागीय प्रतिनिधि कार्यालय
14 MAR 2008
अहमदाबाद

In the matter of :

M/s. Ram Prints & Shyam Prints & Ors. Appellant

V/S.

C.E. Dr. Ahmedabad Respondent

I am directed to transmit herewith a certified copy of Order No. A/419-421/WZB/AHD/08 dated 4.3.08/11.3.08 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, 1994.

Asstt. Registrar

Copy to :

1. Respondent C.C.Ex. Ahmedabad-II
2. Advocate / Consultant Sh. P.M. Dave
3. Chief Commissioner, C. Excise/Customs Ahmedabad
4. Comm. C.Ex. / Custom (Appeals) Ahmedabad-II
5. Jt. C.D.R. CESTAT, Ahmedabad
6. Central Library, CESTAT, New Delhi
7. CESTAT Bar Association, New Delhi
8. CESTAT Bar Association, ~~Mumbai~~ / Ahmedabad
9. Master File
10. M/s. Commercial Laws of India Pvt. Ltd
11. Centax Publication (P) Ltd.
12. ~~M/s. Con-cus Publications.~~
13. Deeparchie Publication.
14. M/s. Taxmann Allied Services Pvt. Ltd.
15. m/s Raghuraman's
16. M/s. Excise & Customs Cases
17. Tax India Online Ltd.

Asstt. Registrar

(2) Syori Processors P.Ltd.
302, GIDC, Phase-II,
Vatva, Ahmedabad

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

COURT NO.III

Appeal No. E/2/06; E/4102/05; E/873/07

Arising out of Order-in-Appeal No. 401/2005(Ahd-I)(AA/A-IV) dt.16/11/2005; No.236-237/2005(Ahd.-I)(AA/A-IV) dt.30/8/2005; No.162 to 164/2007/(Ahd-I) dt. 16/4/2007

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

For approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

M.Veeraiyan

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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

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Appellant(s)
M/s.Ram Shyam Printers
M/s.Jyoti Processors (P) Ltd.
CCE, Ahmedabad

Respondent(s)
CCE, Ahmedabad

M/s.Jyoti Processors P. Ltd.

Appearance:-
Sh.P.M.Dave, Adv. for the parties.
Sh.M.M.Mathkar, JDR for the Department.

CORAM:

MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
MR. M. VEERAIYAN, MEMBER (TECHNICAL)

M.Veeraiyan

Date of Hearing: 4/3/2008
Date of Decision: 11/3/2008

ORDER No. A/419-421 /WZB/AHD/2008

Per: Mr. M. Veeraiyan, Member (Technical)

1.1. Appeal No.E/4102/05 by M/s.Jyoti Processors P. Ltd. is against the order of the Commissioner(Appeals) No.236-237/2005(Ahd.-I)(AA/A-IV) dt.30/8/2005, which was passed on appeal against the order of the original authority No.22/AC/Offence/2004 dt. 25/11/2004. Appeal No.E/2/06 of M/s.Ram Prints & Shyam Prints is against the order of the Commissioner(Appeals) No. 401/2005(Ahd-I)(AA/A-IV) dt.16/11/2005, which was also passed on appeal against the order of the original authority No.22/AC/Offence/2004 dt. 25/11/2004.

1.2. Appeal No.E/873/07 is by the Department against the order of the Commissioner(Appeals) No.162 to 164/2007/(Ahd-I) dt. 16/4/2007, which is passed against the order of the original authority No.04/Addl.Commr./2007 dt. 12/1/2007.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

3.1. M/s.Jyoti Processors Pvt. Ltd. applied under Rule 96 ZNA for payment of duty under compounded levy scheme, which was accepted by the Commissione

3.2. Seizure related proceedings:-

a. On 19/9/2001, consignments cleared from M/s.Jyoti Processors Pvt. Ltd. which were about to be unloaded at

M. Veeraiyan

M/s.Ram Prints & Shyam Prints were seized and on follow up some quantity of goods were also seized from the premises of M/s.Jyoti Processors Pvt. Ltd.

b. Proceedings were initiated against M/s.Ram Prints & Shyam Prints, M/s.Jyoti Processors Pvt. Ltd. and others in so far as they were related to the seized goods. The seized goods were, confiscated and penalty of Rs.47,157/- on M/s.Ram Prints & Shyam Prints, penalty of Rs.27,444/- on M/s.Jyoti Processors Pvt. Ltd. and penalty of Rs.70,000/- on Sh.Nirmalkumar Agarwal, Director of M/s.Jyoti Processors Pvt. Ltd. were imposed.

c. Commissioner(Appeals) vide his order dt. 30/8/2005 rejected appeals of M/s.Jyoti Processors Pvt. Ltd. and Sh.Nirmal Kumar Agarwal. Commissioner(Appeals) vide his order dt. 16/11/2005 rejected the appeal of M/s.Ram prints & Shyam Prints. Commissioner(Appeals). He vide his order dt.30/12/2005 allowed the appeal and set aside the penalty on M/s.Ram Prints and the Department has not come on appeal against the said order.

3.3. **Demand relating to past clearances:-**

a. A show cause notice dt. 21/12/2005 was issued to M/s.Jyoti Processors Pvt. Ltd. demanding central excise duty of Rs.27,14,682/- holding that during the period 5/5/2001 to 18/9/2001, a total quantity of 8,65,701 L. Mtrs. of fabrics of different varieties were sent to M/s.Ram Prints & Shyam Prints from M/s.Jyoti Processors Pvt. Ltd. without carrying out stentering activities.

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b. Addl. Commissioner confirmed demand of Rs.27,14,682/- and imposed a penalty of Rs.20 lakhs under Section 11AC on M/s.Jyoti Processors Pvt. Ltd. ; of Rs.5 lakhs on Ram Shyam Prints and Rs 10 lakhs on Shri Nirmal Kumar Agarwal.

c. Commissioner(Appeals) by his order dated 16-04-2007 allowed the appeals of all the 3 parties holding that the allegation of clandestine removal of fabrics to M/s.Ram Prints & Shyam Prints without stentering has not been proved. The department is on appeal against this order.

4. Ld. Advocate filed detailed synopsis of dates and events relating to the seizure and subsequent demand on M/s.Jyoti Processors Pvt. Ltd. based on the delivery challans recovered from M/s.Ram Prints & Shyam Prints. He also submitted that inasmuch as M/s.Jyoti Processors Pvt. Ltd. was under compounded levy scheme, the duty liability was based on the APC determined by the Commissioner and hence the actual production was not relevant. There was no incentive from the excise angle for them to show lesser production in the book of accounts. The allegation that the dyed fabrics have been removed without stentering is incorrect. The stentering is to make the fabrics shrink-proof or shrink resistant. If the fabrics were transferred without stentering the same would have been wet. The allegation that the goods have been removed without stentering has been made without subjecting the goods to any chemical test. It is merely based on the statements of the driver and one of the Directors, which statements stand retracted.

5. Ld. DR reiterates the grounds of appeal in appeal No.E/873/07. He also reiterates the findings of the Commissioner(Appeals) in appeal No.E/2/06 and E/4102/05.

6. We have carefully considered the submissions from both sides. The relevant portion of the findings of the Commissioner(Appeals) is reproduced below:-

> *"20. When this case was booked, rightly it was inferred that M/s.Jyoti had been aiding and abetting in getting M/s.Ram/Shyam Prints processed their goods from power operating machine from Jyoti, even though they were hand processing i.e. non-power operated unit. Therefore,. when the scheme of compounded levy was optional, the Revenue authorities suspended the facility of compounded levy for M/s.Jyoti Processors. Suspension and withdrawal of facility was upheld as their appeal was rejected by Commissioner(Appeals) order in appeal No.137/2003(Ahd-I) dt. 12/3/2003. The withdrawal of compounded levy facility was effective from date of withdrawal. It cannot be retrospective. The ld. Commissioner(Appeals) in his order had not held that for past period the facility had been inappropriately or was wrongly availed. Had it been so then for 28/6/2001 to 19/9/2001 the demand for differential duty i.e. what would be payable under normal valuation and mode of payment minus what had been already paid under compounded levy scheme should have been demanded. But nothing of that sort was done. Then how that order of Commissioner(Appeals) helps the case which was brought under impugned SCN. This demand on the appellant No.1 is on the ground that they had manufactured and cleared (i.e. dyed and printed) CF and MMF but had cleared those without stentering (for quantity See Annexure B&C of SCN), if fabrics were not stentered then on such fabrics no duty can be charged. Non-stentered fabrics are not capable of being used as textile fabrics. Stentering is an integral part of manufacture. Then also demand against appellant No.1 is not maintainable. It means for same factory and manufacturer two schemes, one of normal value and rate and for other fabrics compounded levy and that rate, for concurrent period is being applied. In the scheme of Central Excise law and procedure such a dichotomy and bigamous situation had not been contemplated, nor the investigator, author of SCN or adjudicator could be allowed to create such a faux pass. Within the period of demand, the appellant No.1 had already paid a total sum of Rs.34,45,376/- by way of duty under compounded levy scheme. Nothing more was liable from them. Revenue authority had badly failed to make a case against appellant No.1 regarding contravention of clause 8(3) of the compounded levy notification."*

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7. Under the compounded levy scheme, the actual production and clearances are not relevant for determining the quantum of excise duty payable. There is no reliable evidence to prove the allegation that M/s.Jyoti Processors Pvt. Ltd. have cleared certain quantities of fabrics without stentering as the same has not been substantiated by any test results. Under these circumstances, the finding of the Commissioner(Appeals) that the allegation of clandestine removal of 8,65,701/- L.Mtrs. to M/s.Ram Prints & Shyam Prints was not sustainable cannot be faulted. No valid grounds have been adduced to interfere with the findings of the Commissioner(Appeals). The confiscation and imposition of penalty relating seizure case is basically on the ground that fabrics which was not stentered have been cleared without payment of duty. Since the primary charge that the goods have been cleared without stentering is not being upheld, the confiscation / penalty imposed are not sustainable.

8. Therefore, appeal No.E/873/07 by the Department is rejected. Appeals No.E/2/06 and E/4102/05 by the parties are allowed with consequential relief.

(Pronounced in Court on 11/3/08)

Sd/- 10/3/08

(Archana Wadhwa)
Member (Judicial)

Sd/-

(M. Veeraiyan)/
Member (Technical)

Nr...

TRUE COPY

Assistant Registrar

Customs, Excise & Service Tax Appellate Tribunal

1 MAR 2008