FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 28/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/70709/2016-CU[DB] dated 22/08/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the **Customs Act, 1962.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/997/2004	**THE ARVIND MILLS LTD** NARODA ROAD, AHMEDABAD GUJRAT
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To

3Advocate(s) / Consultant(s):

S J VYAS ADVOCATE
C 4 JAY APARTMENTS OPP AZAD
SOCIETY AMBAWADI
AHEMDABAD-15

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Allahabad
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD
Court No. 1

Appeal No. : C/997/2004- CU[DB]

Arising out of O/O No. 02/Commissioner/Lucknow /2004 dated 20.01.2004 passed by Commissioner of Customs (Preventive), Lucknow.

For approval and signature:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

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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 His Lordship wishes 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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M/s The Arvind Mills Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Customs,
Lucknow.

...RESPONDENT(S)

APPEARANCE:
Shri Shridev J. Vyas, Advocate — for the Appellant(s)
Shri Pawan Kumar Singh, Superintendent (AR) — for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 22. 08. 2016

Final ORDER NO. 70709/2016

Per Mr. Anil G. Shakkarwar :

The brief facts of the case are that the appellants are manufacturer of Denim Fabric. They are also exporter of the goods manufactured by them. They exported one consignment to Nepal through Bill of Export dated 19-11-2003. The said bill of export was enclosed with Central Excise invoice dated 12-11-2003, Nepal Invoice No. NI/34 dated 12-11-2003 and Export Invoice No. 101842 dated 12-11-2003. The description on the export invoice stated that the export was under (DEPB) on post export basis. It was noticed by the Departmental Authorities that the description of the goods on the Central Excise invoice Nepal invoice and export invoice enclosed to said Bill of Export were different. A sample of the goods was drawn and forwarded for testing to M/s Textile Testing Laboratory, Ministry of Textile, Varanasi. The test report indicated that the goods contained 76 per cent Cotton and 24 per cent Polyster, whereas the description of the goods in Central Excise invoice was Cotton fabric and that on Nepal invoices was Cotton Dyed Denim Cloth (Sort No. 6204) 100% Cotton, 9 oz Poly Indigo Denim Style No. 6204. Since the description of the goods did not confirm to the laboratory report about the composition of cloth, the matter was adjudicated by Commissioner of Customs (Preventive) Lucknow, after giving the opportunity of presenting their case to the appellant. Commissioner through his impugned Order-in-Original 02/Commissioner/Lucknow/2004 dated 20-01-2004, holding that the exporter mis-declared the description of the goods has held them liable to be imposed with penalty and goods were held liable to be confiscated. The Original Authority through the impugned order has ordered the appellant to export the goods under free shipping bill and confiscated the goods and imposed redemption fine of Rs.2 Lakh. He also imposed penalty of Rs.20,000/- under Section 113 (i) of the Customs Act, 1962 on the appellant.

2. Aggrieved by the said order passed by the Original Authority the appellant is before this Tribunal. The contention of the appellant in the grounds of appeal is that they admitted that there was error in writing the description of the goods in various connected documents and that the claim of DEPB Scheme would not have been allowed to them since the shipping bill did not show the goods to be 100% cotton and export of 100% cotton was essential for the benefit of DEPB Scheme. They argued that it was clerical mistake and there was no intention to avail undue benefit of DEPB Scheme by mis-declaring the goods.

3. Ld. Counsel for the appellant has contended that the description in the export invoice was made on the basis of the description of goods in the letter of credit and various documents were prepared by different functionaries and discrepancy in the description of goods crept in and there was no benefit availed by them under DEPB Scheme after the adjudication. The goods were exported under free shipping bill without availing any benefit of DEPB Scheme. He has further argued that due to the error in the entering of description of goods in various connected documents, in any case on scrutiny with the authorities DEBT would not have been allowed to them

due to such discrepancy and that they had no intention to misdeclare and avail undue benefit. He has further argued that had they have such an intention to avail undue benefit of DEPB Scheme by way of misdelcaration, there would not have been discrepancy in the description of goods in the different connecting documents.

4. The ld. DR submitted that it appears to be a clerical mistake on the part of the appellant.

5. We have considered the contentions of both the sides. We find that though there was no intention of availing undue benefit but due to different descriptions on different documents mis-declaration had taken place. Therefore, we do not interfere with the Original Authority's order of confiscation and imposition of redemption fine. However, we find that had there been any intention to avail undue benefit, there would not have been clerical errors in the description given in various connected documents. Therefore, we are satisfied that there was no intention to avail undue benefit. Therefore, we set aside the original order to the extent of imposition of penalty on the appellant. The impugned order stands modified to the above extent and the appeal is allowed partially.

(Dictated and pronounced in the open Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(Ansari)

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001