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: 10/01/2018

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70112-70113/2018-EX[DB] dated 04/01/2018

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1228/2010	**SHAMKEN SPINNERS LTD.** 94 KM Stone, Village Kotwan, Kosikalan, Distt. Mathura (U.P)
2	E/1254/2010	**V P Yadav** C/o Shamkeen Spinners Ltd. 94th Km Stone Village Kotwan, Kosikalan MATHURA UP
		Name and Address of Respondent
3		C.C.E. & S.T.-Lucknow 7 A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001
4		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

S. C. Kamra & Co. & Kartikeya Narain (Advocates)
B-2/210 (Basement)
Safdarjung Enclave,
New Delhi
Delhi
110029

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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 Second Folder Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/1254 & 1228/2010-EX[DB]

(Arising out of Order-in-Original No. 03/Commr./LKO/CX/2010 dated 29/01/2010 passed by Commissioner of Central Excise & Service Tax, Lucknow)

Shri V.P. Yadav &
M/s Shamken Spinners Ltd. — **Appellants**

Vs.

Commissioner of Central Excise & S.T., Lucknow — **Respondent**

Appearance:

Shri S.C. Kamra & Shri Kartikeya Narain, Advocates — for Appellants
Shri Mohammad Altaf, Assistant Commissioner (AR), — for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	30/11/2017
Date of Pronouncement	:	04/01/2018

FINAL ORDER NOs-70112-70113/2018

Per: Anil G. Shakkarwar

These two appeals are directed against Order-in-Original No. 03/Commr./LKO/CX/2010 dated 29/01/2010 passed by Commissioner of Central Excise & Service Tax, Lucknow.

2. The facts leading to filing of this appeal are, in brief, as under:-

2.1 M/s Shamken Spinners Ltd., Kosikalan, Mathura (hereinafter referred to as the Appellant company) are a 100% EOU engaged in manufacture of spun cotton yarn, spun yarn of synthetic fibers and spun yarn of blended fibers for export. The goods being manufactured fall under Chapter 52 and 55 of the Central Excise Tariff and would attract excise duty when cleared into DTA. Shri V.P. Yadav is the General Manager (Tech.) of the Appellant Company. For manufacture of synthetic spun yarn and polyster cotton blended yarn, polyester staple fibre (PSF) was being procured by the Appellant Company from M/s Indo Rama Synthetics (I) Ltd. free of duty. Scrutiny of invoices of M/s Indo Rama Synthetics revealed that PSF was being cleared by them to the Appellant Company, as deemed export by availing the benefit of deemed exports in term of para 8.3 of the Exim Policy.

2.2 The dispute in this case is about rate of duty on DTA clearances in terms of exemption under Notification No.23/03-CE dated 31.03.2003. According to the appellants, they are covered by Sl. No.3 of the table to the notification as the goods have been manufactured wholly from the raw material produced or manufactured in India and accordingly duty payable on DTA clearances would be equal to the duties of excise payable under Section 3 of Central Excise Act, 1944 or any other law for the time being in force, on like goods produced or manufactured in India. However, according to

Revenue, in view of Explanation II(ii) to said notification, the PSF received from M/s Indo Rama Synthetics under Deemed export benefit (to M/s Indo Rama Synthetics) is deemed to be imported goods and hence not manufactured in India and therefore, rate of duty applicable would be the rate specified in Sl.No.2 of the table to the notification i.e. 50% of the aggregate of duties of customs. On this basis, a show cause notice dated 03.11.2008 was issued to the appellants for-

(a) demand of central excise duty amounting to Rs.56,63,820/- from the appellant company in respect of DTA clearances during period from 17.10.2007 to 15.04.2008 under Section 11A of the Central Excise Act, 1944, along with interest on it under Section 11AB;

(b) imposition of penalty on the Appellant Company under Section 11 AC of Central Excise Act; and

© imposition of penalty on Shri Yadav, General Manager (Tech.) of the Appellant Company under Rule 26 of the Central Excise Rules, 2002.

2.3 The show cause notice was adjudicated by the commissioner vide impugned Order-in-Original dated 29.01.2010 by which-

(a) the duty demand of Rs.56,63,820/- was confirmed against the Appellant Company along with interest;

(b) penalty of equal amount was imposed on the Appellant Company under Section 11 AC, and

© penalty of Rs.1,00,000/- was imposed on Shri V.P. Yadav under Rule 26 of Central Excise Rules, 2002.

2.4 Aggrieved by the above order, these appeals have been filed.

3. Shri S.C. Kamra and Shri Kartikeya Narain, Advocates, the learned Counsel for the appellants, pleaded that by virtue of Explanation II (ii) of Notification No.23/03-CE, PSF received from M/s Indo Rama Synthetics is deemed to be imported goods, the same cannot be treated as not manufactured in India, that PSF received from M/s Indo Rama is manufactured in India and since the spun yarn is wholly manufactured from PSF manufactured in India the same is covered by Sl. No.3 of the table to said Notification No.23/03-CE, that the goods deemed to be imported goods cannot further be deemed to be not manufactured in India, as the goods imported into India can be product of India origin also, that just because the PSF supplier- M/s Indo Rama have availed deemed export benefits under para 8.3 (a) and

8.3 (b) of the Exim Policy in respect of PSF supplied to the appellant company, the PSF so supplied will not cease to be manufactured in India, that the impugned order is, therefore, not correct, and that in view of this they prayed for allowing both the appeals.

4. Learned A.R. for Revenue submits that for availing benefit of any notification, all the conditions specified therein need to be satisfied and if any of the condition is not satisfied then the benefit of such exemption is not admissible. He has submitted that it is undisputed fact that M/s Indo Rama Synthetics (I) Ltd. has treated supply to appellant company as deemed export under para 8.3 (a) and 8.3 (b) of the Exim Policy and that said Explanation (ii) shall treat such supply as imported goods and therefore condition of Sl. No.3 of the said notification is not satisfied.

5. We have carefully gone through the contentions from both the sides and perused the records and the relevant notification. It is undisputed fact that M/s Indo Rama Synthetics (I) Ltd. has availed benefit of deemed export under said paragraphs of the Exim Policy and therefore, under said Explanation (ii) the supply received by appellant company were imported goods. Therefore, we hold that condition under Sl. No. 3 is not satisfied and therefore the benefit of exemption at Sl. No.3 is not admissible to the appellant

company. For the purpose of appreciation said Explanation-II and said Condition-3 are reproduced bellow:-

Explanation-II- For the purposes of this notification, following supplies shall be treated as imported goods:

(i) goods received from any export oriented undertaking or Software Technology Park unit or Electronic Hardware Technology Park unit, as the case may be;

(ii) goods received from Domestic Tariff Area under benefits of deemed exports under Paragraph 8.3 (a) and (b) of the Foreign Trade Policy.

Condition-3 (i) if the goods are produced or manufactured wholly from the raw materials produced or manufactured in India;

6. Since the matter was related to interpretation of notification, therefore, there was no malafide on the part of appellants. We, therefore, set aside penalty imposed under Section 11AC on the manufacturer-appellant in the impugned Order-in-Original and also set aside personal penalty of Rs.1 lakh imposed on Shri V.P. Yadav. In so far as the demand of duty is concerned the impugned Order-in-Original is affirmed. As a result, appeal filed by Shri V.P. Yadav is allowed and appeal filed by M/s Shamken Spinners Ltd. is partially allowed and partially rejected.

(Pronounced in Court on 04/01/2018)

Sd/-
(Archana Wadhawa)
Member (Judicial)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

akp

प्रमाणित प्रति/Certified True Copy

12/02/18

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