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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **10/02/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/50086/2014-CU[DB]** dated **09/01/2014**

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(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/3134/2012	**CHEEMA SPINTEX LTD** SCO 64-65, 3RD FLOOR, SECTOR-17 A, CHANDIGARH PUNJAB
		Name and Address of Respondent
2		**NEW DELHI(ICD ITC)**

Copy To
3Advocate(s) / Consultant(s):

G. S. BHANGOO,ADV
H.NO. 5, SECTOR-10A,
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4 Bar Association, CESTAT, Delhi

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066

Date of Hearing 09.01.2014
Date of Decision 9.1.14

For Approval &Signature :

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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

Appeal Nos. C/3134/2012 -CUS[DB]
[Arising out of Order-in-Original No.21/2012, dated 16.07.2012 passed by the Commissioner (Customs), ICD, Tughlakabad]

M/s. Cheema Spintex Ltd. Appellants

Vs.

Commissioner (Customs), New Delhi Respondent

Appearance
Shri Vickrant Kackaria, Advocate - for the appellants

Mr. B.B. Sharma, DR - for the respondent

CORAM: **Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final Order No. 50086/2014, **dated** 09.01.2014

Per Hon'ble Mrs. Archana Wadhwa :

The appellant is an exporter and filed 91 Shipping Bills for export of combed hosiery yarn on cone on a total f.o.b. value of Rs.19.61

crores approximately. The said shipping bills were filed under Duty Drawback scheme.

2. However, before filing such shipping bills under duty drawback scheme, the appellant had addressed a letter dated 25.11.2008 to the Revenue officer indicating that the DEPB rate on the yarn stands raised from 3.67% to 7.67% vide public Notice No.102(RE-2008)/2004-09, dated 05.11.2008. However, as the EDI system at the time of export was not accepting the higher rate of duty, the appellants were filing shipping bills under duty drawback scheme at the rate of 4% "under protest" and they would make a request for conversion of the duty drawback shipping bills to DEPB shipping bills at the relevant time. Accordingly, after the completion of exports on 08.04.2009, the appellant vide their letter dated 08.02.2010 submitted an application seeking such conversion from duty drawback scheme to DEPB Scheme with a claim of export incentive at the rate of 7.67%. The said request of the appellant stands denied by the Commissioner and hence the present appeal.

3. After hearing both the sides and on going through the impugned order, we find that there is not much dispute on facts. Admittedly, before undertaking the exports, the appellant had intimated the Revenue the reasons for ~~availing~~ filing the shipping bills under ~~DEPB~~ duty drawback Scheme and reserving their right to claim for conversion at the relevant subsequent period. The Commissioner has observed in the said order that the appellant's request falls under the purview of Section 149 of the Customs Act, 1962. However, he has referred to Circular No.4/2004-Cus, dated 16.01.2004 issued by the Board and has observed that such conversion should not be ordinarily allowed from one scheme to

another. He has also referred to a public Notice No.102/RE-2008 (2004-09), dated 05.11.2008, vide which the rates were enhanced from 3.67% to 7.67% and has observed that there was no delay in the EDI System as the amendments to the rates of DEPB was done by DGFT only on 29.05.2009.

4. However, we do not find any force in the above contention of the Revenue. There cannot be any dispute on the ~~fact~~ law that conversion of shipping bills from one export promotion to another export promotion should not be ordinarily allowed. As such, the question required to be decided in the present appeal is to whether such conversion request made by the appellant is justified or not.

5. It is seen that prior to the export itself, the appellant had intimated the Revenue about their interest in export under DEPB scheme and non-acceptance of the request of higher rate by the EDI system. The Commissioner has observed that the appellant could have done the manual amendments for claiming the benefit of DEPB higher rate. However, it is not understood as to when the appellant has clearly intimated the Revenue about their intention to avail DEPB benefit and the fact ~~that~~ of non-acceptance by EDI system, why the Revenue did not guide the appellant to do the changes by a manual process. The observations of the Commissioner that the exporter on their own had opted for the duty drawback scheme at the rate of 4% incentive, cannot be appreciated in as much as the exporter had, prior to the exports intimated the Revenue about filing of shipping bills under protest and to subsequently ~~claimed~~ claim their ~~own~~ conversion under DEPB scheme.

6. In view of the above, we set aside the impugned order and hold that the appellant's request for conversion from duty drawback to DEPB scheme shipping bills is proper and fair and the same is accordingly allowed with the consequential relief to the appellant.

15/1/14
(Archana Wadhwa)
Member (Judicial)

16/1/14
(Rakesh Kumar)
Member (Technical)

SSK