REGISTERED / AD

FAX : 011-26108426

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

Dated: 26/08/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/52608-52609/2015-CU[DB]** dated **12/08/2015**

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/Stay/1994/2010	C/368/2010	**CENTURY YARN,** DIVISION OF CENTURY TEXTILES & INDUSTRIES LTD. VILLAGE & POST SATRATI, AGRA MUMBAI ROAD, DISTT. KHARGONE-451660 (M.p.)
2	C/Stay/1995/2010	C/369/2010	**CENTURY DENIM,** DIVISION OF CENTURY TEXTILES & INDUSTRIES LTD. VILLAGE & POST SATRATI, AGRA MUMBAI ROAD, DISTT. KHARGONE-451660 (M.p.)

	Name and Address of Respondent
3	-C.C.E. INDORE Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.) -
4	-C.C.E. INDORE Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.) -

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

V. Sridhara, Advocate
401, KAKAD CHAMBERS,
132, DR.
ANNIE BESANT ROAD,
WORLI, MUMBAI,
MAHARASHTRA
400018

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6 Additional Party's Name & Address :

7 Bar Association, CESTAT, Delhi

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

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

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

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

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

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

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

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

16 C.D.R. **17** Office Copy **18** 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/Order : 12.8.2015

Appeal No. C/368-369/2010-CU(DB)

(Arising out Order-in-Appeal No. IND-I/106-107/2010 dated 31.3.2010 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore)

For Approval & Signature :

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s Century Yarn
M/s Century Denims — Appellant

Vs.

CC, Indore — Respondent

Appearance:

Shri Rachit Jain, Advocate - for the Appellant

Ms. Suchitra Sharma, D.R. - for the Respondent

Coram : **Hon'ble Mr. Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

F. Order No. 52608-52609/2015

Per R.K. Singh:

Appeals are filed against order-in-appeal dated 31.3.2010 in terms of which customs duty demands amounting to Rs.6,63,988/- and Rs.2,15,235/- were confirmed along with interest, and equal mandatory penalty under Section 114A of Customs Act, 1962 was also imposed.

2. The facts, briefly stated, are as under:

The appellant is a 100% EOU. It procured raw material without payment of duty under Notification No. 53/1997-CU dated 3.6.1997. The appellant imported cotton on the basis of procurement certificate issued by the designate authority of Customs & Central Excise based on which the Custom authorities at the port allowed clearance thereof duty free. The goods were received in the appellant's factory and at the time of weigment while re-warehousing found to be short (in weight), although the number of bales were the same as imported and were intact. The appellant raised debit notes on the supplier for the quantity short received. The adjudicating authority confirmed the demand on the amount which was recovered by the appellant from the foreign supplier on account of such shortage noticed.

3. The appellant has contended that there was no pilferage of the goods imported and the difference in the weight of cotton normally arises as a result of variation in the moisture contained at the time of supply and at the time of receipt of goods in the factory and that realising the same even the CBEC had issued a Circular No.

462/41/93-CU dated 15.4.83 stating that variation up to 1% may be condoned.

4. Ld. DR on the other hand stated that the goods having been short received the duty is recoverable.

5. We have considered the contentions of both sides. We find that there is no allegation either in the show cause notice or in the order of the first appellate authority that there was any diversion of the goods after their import duty free. The number of bales received in the factory were the same as shown in the Bill of Entry and they were found to be intact and unopened at the time of re-warehousing in the factory which was done in the presence of the custom officer. Cotton is a kind of raw material which can vary in weight marginally depending upon its moisture content. Possibly for that reason only CBEC vide the aforesaid circular dated 15.4.1983 (supra) stated that loss in weight up to 1% was condonable, although it gave no scientific basis as to how the figure of 1% was arrived at. Further, there is nothing sacrosanct about the figure of 1% mentioned in the said letter CBEC. For example if the difference in weight up to 1% was a result of diversion of goods, that would be chargeable to duty. Notification No. 53/97-Cus. exempts the goods imported for use in the manufacture of export goods. The entire quantity of bales of cotton imported was received in the factory intact and there is

neither any allegation of diversion nor any evidence to that effect. Even the supplier reimbursed the amount towards shortage noticed in weight which also supports the view that there was no diversion of the duty free goods. Thus none of the conditions of the exemption Notification No. 53/1977-Cus. are violated. In these circumstances the impugned demands are totally unsustainable and are therefore set aside. As a consequence, the appeals succeed and are allowed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM