FAX : 011-26108426 REGISTERED / AD

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

Dated: **27/10/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/54014/2014-CU[DB]** dated **01/10/2014**

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/177/2008	**GORAYA STRAW BOARD MILLS PVT. LTD.** BAZPUR ROAD,KASHIPUR,UTTARANCHAL-244713
		Name and Address of Respondent
2		**C.C.E. MEERUT II** Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

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Copy To

3Advocate(s) / Consultant(s):

Rajesh Jain
A-2/142, SAFDARJUNG ENCLAVE,
NEW DELHI

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4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
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 C.D.R. **15** Office Copy **16** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 177 of 2008-Cus[DB]

[Arising out of Order-In-Appeal No. 9-Cus/APPL/MRT-II/2007 dated 30.11.2007 passed by Commissioner (Appeals), Meerut-II]

For approval and signature:

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

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?	No
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

M/s. Goraya Straw Board Mills Pvt. Ltd. Appellants

Vs.

Commissioner of Central Excise, Meerut II Respondent

Appearance:

Shri Rishabh Jain, Advocate for the Appellants
Shri A Jain, DR for the Respondent

CORAM:

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

Date of Hearing /decision: 1.10.2014

ORDER NO. FO/54 014 /2014-Cus(Br)

Per Archana Wadhwa (for the Bench):

The challenge in the present appeal is to penalty of Rs.7 lakhs imposed upon the appellant in terms of provisions of Section 112 of the Customs Act, 1962.

2. As per facts on record, the appellant is manufacturing unit engaged in the manufacture of paper and paper board. As waste paper is one of the raw materials, they imported the same fromUSA and filed a bill of entry dated 1.9.2006. On examination, out of total weight of 121 .84 MT , 29.96 MT was found to be 'plastic waste of road sweepings' and the rest 91.88 MT was 'waste paper collected as road sweeping'. Inasmuch as the plastic contents in the consignment which were sent to Central Institute of Plastic Engineering and technology, Lucknow were found to be toxic substance and inasmuch as the percentage of the same was found to be on the higher side, proceedings were initiated ~~on~~ against the appellant for confiscation of

the goods as also for imposition of penalty upon them. The original adjudicating authority absolutely confiscated the plastic contents of the consignment and allowed the appellant an option to redeem the waste paper content on redemption fine of Rs.5 lakhs. He also imposed penalty of Rs.7 lakhs upon the appellant. The said order of the Additional Commissioner was upheld by the Commissioner (Appeals). Hence, the present appeal.

3. The appellants' contention is that they had ordered for import of waste paper and there is no evidence on record that toxic plastic content found in the consignment were sent by the exporter with the knowledge of the appellant. Inasmuch as the appellants were not a party to the consignment of the plastic materials, they should not be penalized. He further submits that appellant is a ~~computer~~ paper manufacturing unit and has no use for the plastic.

5. On the other hand, Revenue has referred to the clause 7 of the Sale Contract entered into between the appellant and the foreign supplier, which is to the effect that -- **"FINAL LOAD POINT QUALITY INSPECTION FEE FOR SELLER'S ACCOUNT. QUALITY SURVEYORS TO BE**

MUTUALLY AGREED UPON." From this, Commissioner (Appeals) has observed that inasmuch as there was a provision for prior inspection of the goods by the surveyor and if it was the intention of the importer to only import waste paper, they were very well equipped for that. If there was no malafide intention, there is no reason as to why the ~~surveyor~~ supplier passed the toxic waste of plastic along with waste paper.

6. We find no merit in the above observation of the Commissioner (Appeals). Merely because there was a checking clause by quality surveyor, the same does not lead to indicate any malafide on the part of the importer. Further, we have to keep in mind that quality inspection and certification is done at the exporter's end and the importer in India has no hand in the same. Further, it is also on record that waste paper was also in the nature of road sweeping as also toxic plastic substance. In the absence of any evidence on record to reveal that the appellant was a party to the presence of such plastic contents in the consignment of waste paper, the Revenues' finding are based upon assumption and presumptions for which the appellant cannot be penalized.

7. Inasmuch as the appellant is not interested in clearance of the goods, we set aside the penalty imposed upon him by modifying that part of the impugned order only. The appeal is allowed to that extent only with consequential relief to the appellant.

(Pronounced in the open court)

16/10/14
(Archana Wadhwa)
Member(Judicial)

16/10/14
(Rakesh Kumar)
Member(Technical)

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