

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

Appeal No. E/3144/2004

Date 11/12/2007

Assistant Registrar  
C.E.S.T.A.T, New Delhi

To :

SWADESHI KOREATEX, VILLAGE VALLAH, VERKA  
BY-PASS ROAD, AMRITSAR.

SWADESHI KOREATEX


Appellant

C.C.E. JALLANDHAR

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 579/07 Excise  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

dated 14-11-07

  
Assistant Registrar  
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. JALLANDHAR

C.C.E. JALANDHAR(HQ AT CHANDIGARH), PLOT NO  
19, SECTOR17-C, CHANDIGARH.

2. Adv. / Consult

SH. R.L. MEHRA & CO.  
M.M. MALVIYA ROAD,  
AMRITSAR

3. B.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL**

**West Block No.2, R.K. Puram, New Delhi-110066.  
Principal Bench, New Delhi**

**COURT NO. II**

**Excise Appeal No. 3144 of 2004**

[Arising out of the Order-in-Appeal No. 173/CE/APPL/JAL/  
2003 dated 26.03.2004 passed by The Commissioner of  
Customs and Central Excise (Appeals), Chandigarh.]

For approval and signature:

**Hon'ble Mr. S.S. Kang, Vice President**

**Hon'ble Dr. T.V. Sairam, 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?
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 Swadeshi Koreatex

Appellant

Versus

CCE, Jalandhar

Respondent

**Appearance**

Shri R.L. Mehra, Consultant - for the appellant.

Shri V.K. Agrawal, Authorized Representative (JDR) - for the  
respondent.

CORAM: Hon'ble Shri S.S. Kang, Vice President  
Hon'ble Dr. T.V. Sairam, Member (T)

**DATE OF HEARING : 14/11/2007.**

Revised Order No. 579/2007EX Dated: 14-11-2007

**Per. S.S. Kang :-**

Appellant filed this appeal against the impugned order, whereby the benefit of credit was denied on the ground that the payment of duty was made from the DEPB account on the imported goods.

2. The contention of applicant is that the demand is time bar. The credit was availed on 03/9/98 and with the monthly return the appellant filed the copy of the bill of entry which was duly defaced by the Proper Officer. The show cause notice was issued on 10/7/2001 alleging suppression against the applicant on the ground that applicant have suppressed the facts to evade the payment of duty. The contention is that as applicant is file the copy of bill of entry which was duly defaced by revenue. In the Bill of entry it was mentioned that

the same is filed under DEPB scheme, therefore, suppression cannot be alleged against the appellant.

3. The contention of revenue is that on merit, the issue is in favour of Revenue. Revenue relied upon the decision of Tribunal in the case Essar Steel Ltd. vs. Commissioner of Central Excise, Vishakhapatnam reported in 2004 (173) E.L.T. 239 (Tri. – LB). In respect of the limitation, the contention is that applicant is not produced DEPB Pass-book when the revenue officers made enquiries and in the case of their sister concern, the credit was reversed in the year 1999.

4. We find that in this case, the appellant is challenging the order on the ground that the demand is time bar. The credit was taken on 03/1/98 and show cause was issued on 10.07.2001 alleging suppression on the ground that the appellant had suppressed the facts that the Customs Duty has been paid through DEPB account.

5. We find from the copy of the bill of entry which was filed along with monthly return by the appellant and we find

that there is declaration that the bill of entry filed under DEPB scheme and assessment was also made under DEPB scheme, therefore, suppression of fact with intent to evade duty can not be alleged against the appellant. In these circumstances, we find the demand is time bar. Hence <sup>demand is</sup> penalty is not sustainable. The impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in the open court)

**(S.S. Kang)**  
**Vice President**

**(Dr. T.V. Sairam)**  
**Member (Technical)**

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