

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

EXCISE APPEAL BRANCH

Appeal No. E/1880/2007
E/M/742/07, E/S/1512/07

Date 07/11/2007

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

To :
M/S JAIPUR SAREE PRINTERS
B-523, ROAD NO. 6, V.K.I. AREA, JAIPUR,
RAJASTHAN

M/S JAIPUR SAREE PRINTERS

C.C.E. JAIPUR I

*MISC ORDER No. 937/07-EX
STAY ORDER NO. 1062/07-EX*

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. *553/07-EX* dated
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

2. Adv. / Consult

*SH. BIPIN GARG, ADV.,
B-1/1289-A, VASANT KUNJ,
N. DELHI-70*

3. M.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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT No.II

E/Misc 742/07, E/S 1512/07, E/A No1880/2007

(Arising out of order in appeal No. 124/GRM/CE/JPR.I/07 dated
9.5.07 passed by the Commissioner of Central Excise (Appeals),
Jaipur)

M/s.Jaipur Saree Printers Appellant
(Rep. by Shri Bipin Garg, Advocate)

Vs

CCE, Jaipur Respondent
(Rep. by Shri S.M. Tata, SDR)

Coram: Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. P. Karthikeyan, Member(Technical)

Date of Hearing: 19.10.2007

Per S.S. Kang:-
Final Order No. 553/2007 EX
STAY order No. 1062/2007 EX
Misc order No. 937/07 EX

Herd both sides. The Misc. application is allowed.

2. The applicant filed this application for waiver of pre-deposit of duty of 1,07,932/- and penalty of equal amount. The applicants are engaged in the process of dyeing of cotton fabrics. The appellants are not liable to clear the goods in view of Notification No 11/2002 as the applicants were using steam in the processing of goods. The demand was confirmed and penalty is imposed by denying the benefit of Notification No.11/2000.

3. Now the applicants raised an issue that applicants are entitled for benefit of another Notification No.3/2001 dated 1.3.2001. The contention is that this notification exempts payment of Central Excise duty in respect of cotton fabrics processed without the aid of power or steamed. The notification further provides that if the steam or power is used in mixing of dye, it shall be deemed to have been processed without the aid of power or steam. The contention of applicant is that therefore, the demand is not sustainable.
4. The contention of revenue is that benefit of Notification No.3/2001 is not claimed before the lower authorities. It is for the first time that the appellants are claiming benefit of notification in this appeal. The contention of revenue is also that benefit of Notification no.11/2001 was rightly denied as the appellants are using steam in the processing of goods.
5. We find that the appellants do not contest denial of benefit of Notification No.11/2001. Now the applicants made a claim that they are entitled for Notification No.3/2001-CE. We find that as per this notification, cotton fabrics processed without the aid of power is for nil rate of duty. Mixing and steaming of fabrics shall be deemed to have processed without the aid of power or steam. Prima facie, in view of the Notification No. 3/2001, we find applicants have a strong case for pre-deposit of duty and penalty.

● We grant waiver of pre-deposit and penalty. The petition is allowed.

6. We find that Notification No. 3/2001 was claimed for the first time before the Tribunal. We find that this issue was not raised before the lower authorities. Therefore, the impugned order is set aside and we remand the matter to the adjudicating authority to consider the claim of the appellants for benefit of Notification No. 3/2001 and to decide after affording an opportunity of hearing to the appellants. The appeal is disposed of by way of remand

(Order dictated and pronounced in the open Court.)

(P. Karthikeyan)
Member(Tech)
MPS

(S.S. Kang)
Vice President