

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

Appeal No. E/2930 2004TO-2932/2004

Date 22.10.2007

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

To: *2. SH. D.S. VIRDI, G.M. 3. SH. V.K. KAD, VP*
M S ARHAM SPINNING MILLS
6TH MILE STONE, TIJRA ALWAR ROAD, BHIWADI
DISTT. ALWAR RAJASTHAN

M S ARHAM SPINNING MILLS

Appellant

C.C.E. JAIPUR I

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. *523-25/07-EX* dated *04-10-07*
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

M. S. M.
Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR I

N.C.R.B.C-SCHEME JAIPUR

2. Adv. Consult

*SH. BALBIR SINGH,
C-5/9, SAFDARJUNG DEVELOPMENT
AREA, OPP. I.I.T. GATE, NEW DELHI*

3. S.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

D. S. M.
Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL

West Block No 2, R.K. Puram, New Delhi 100 066

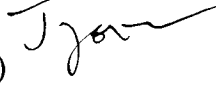
Excise Appeal No. E/2930-32/04

(Arising out of Order-in-Original No. 1/2004 dated 23.2.2004 passed by
Commissioner of Central Excise, Jaipur.)

For approval and signature:

Hon'ble Ms Jyoti Balasundaram, Vice President

Hon'ble Mr. K.K. Agarwal, Member (Technical)



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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? : ___
 3. Whether Their Lordships wish to see the fair copy of the Order? : Yes
 4. Whether Order is to be circulated to the Departmental authorities? : Yes
-

Arham Spinning Mills

Vs

Commissioner of Central Excise, Jaipur

Appellants

Respondent

Appearance:

Shri Balbir Singh, Advocate, for Appellants

V.K. Agarwal, D.R, for Respondent

CORAM:

Hon'ble Ms Jyoti Balasundaram, Vice President

Hon'ble Mr K.K. Agarwal, Member (Technical)

Date of Decision: 4.10.07

Final ORDER NO. 523 - 525/2007 EX

Per: Mr K.K. Agarwal, Member (Technical)

1. The appellant M/s Arham Spinning Mills is engaged in the manufacture of cotton and manmade yarn classifiable under chapter 52 and 55 of the

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Central Excise Tariff Act. The yarn manufactured at their factory is sold/cleared in the following manner:

- (a) Clearance to Ludhiana depot
- (b) Clearance to Delhi depot
- (c) Direct factory gate sales
- (d) Exports including deemed exports

2. As per their contention, during the manufacturing activity, a lot number is allotted to yarn. This lot number is used as identification mark so as to correlate used yarn with the actual yarn manufactured in the factory. The lot number is normally mentioned in the production records and invoices issued for sale or depot transfer. The premises were searched by the Central Excise Authorities on 28.1.2000 along with premises of the depot and customers. During the search operations, various invoices issued by Ludhiana depot were seized from the possession of customers. As a result of invoices so seized from the customers, a comparative study was conducted. In the comparative study, customer copy of invoices and depot copies (retained at depot) were compared. On comparison, it came to light that in respect of certain invoices, while the description given in the customer's copy was polyester yarn, one in the depot copy was that of cotton yarn and therefore it was presumed that total sale made from the depot in respect of those lot numbers was in fact of polyester/blended yarn, which was cleared from the factory gate as cotton yarn. Accordingly, show cause notice was issued alleging that the appellant has sold polyester/blended yarn/cotton yarn from the factory gate and accordingly demanded Central Excise duty of Rs 47,53,615/-. It was further alleged that quantum of freight and insurance has not been added in excisable value

and duty amounting to Rs 17,07,337/- was worked out on this account. Show cause notice referred to few instances to show that the appellant cleared polyester/blended yarn in the guise of cotton from factory gate resulting in short payment of duty. Following are the instances picked up in the show cause notice:

- (a) Few clearances pertaining to M/s Emcee & Sons which show variation in description of yarn in the two copies of the same invoices i.e. depot invoice and customer copy.
- (b) Three factory invoices were pointed out, against which corresponding invoices issued from depot were shown. It was shown that in the factory invoices, material was shown as cotton yarn, whereas corresponding four invoices issued from depot to customers depicted yarn as polyester grey yarn.
- (c) Invoices issued from depot to M/s Swastik Trading Company were shown so as to allege that yarn was described as polyester in these invoices, whereas the corresponding yarn was cleared from the factory as cotton yarn.

3. The learned advocate for the appellants submits that the show cause notice was replied by them wherein they denied all the allegations and have demanded copies of invoices which were relied upon in the show cause notice. In the meanwhile, it was asserted that the department has no evidence to establish that the two yarn differently described in the invoices was actually polyester yarn, nor there is any allegation that the polyester yarn was cleared from the factory without payment of duty and without accountal in its statutory records. There was no allegation of excess purchase of cotton in the factory so as to show more production of cotton

yarn. Some calculation mistake was also pointed out. The appellant was extended personal hearing on few occasions, but the same could not be attended by him on account of serious illness of their advocate, who finally expired and another advocate has to be engaged. Though the department supplied them with the copies of the invoices, they could not submit their detailed reply and final order was passed by the Commissioner in the absence of any detailed reply confirming the demand and imposing penalty on the company, Shri D.S. Viridi, General Manager and Shri V.K. Kad, Vice President marketing of M/s ASM.

4. It was submitted that whenever a fabric is manufactured, a particular lot number is assigned to it and this lot number continues to be the same till the disposal of the goods by way of sale/transfer to depot etc and is mentioned in the customer's copy also. By reference to the lot numbers mentioned in two sets of invoices, they can establish that the total quantity of yarn manufactured under that lot number has been cleared on payment of applicable rate of duty and that though there have been errors on their part in wrongly giving the description of yarn as polyester yarn in some cases though the yarn manufactured was cotton yarn only and vice versa. They produced the copy of disputed invoices and delivery challan in support thereof. It was admitted that this evidence was not placed before the Commissioner as their advocate got sick and could not present their case and the fact that he was genuinely sick is borne out of the fact, that he ultimately expired. Appellant, however, did not produce the original copies of the challans and invoices which according to them are available with the department and can be looked into by it to examine the correctness of the averment now being made. They submitted that once this exercise is

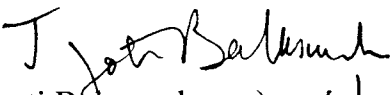
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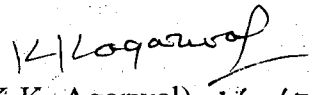
undertaken, it will fully establish that there has been no short payment of duty and accordingly no cause for imposing penalty on any of the appellants.

5. We have considered submissions, we find that the plea now being taken by the appellant was never taken before the Commissioner and therefore there are no findings by the Commissioner of the same. Normally, on facts, new plea is not allowed before the Tribunal, but in this case we find the matter was decided without hearing the appellants as they have not availed of several opportunities of hearing given to them and we also note that after supply of the copies of invoices, there is no further reply from the appellants which has been explained by them to be on account of illness of their advocate. In view of this, principles of natural justice require that they should be given an opportunity of presenting their case before the Commissioner after receipt of the copies of the disputed invoices etc who should then arrive at finding on the basis of submissions made by them. Accordingly, we set aside the order of the Commissioner and remand the matter back to the Commissioner with a direction that he should afford an opportunity to the appellants to submit a detailed reply and to afford them an opportunity of hearing and thereafter to pass an order after taking into account the pleas made by them. All issues are kept open.

6. The appeals are thus allowed by way of remand, as per above terms.

(Dictated and pronounced in the open Court.)


(Ms Jyoti Balasundaram) 16/10
Vice President


(K.K. Agarwal) 16.10.07
Member (Technical)