

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

Appeal No. E/2132/2007
E/COD/230/07, E/S/1753/07
Assistant Registrar
C.E.S.T.A.T, New Delhi

Date 30/08/2007

To :
M/S SWADESHI POLYTEX LTD
C/O PRIYADARSHI MANISH, 27, VIDYUT NIKUNJ,
PLOT NO 112, PATPARGANJ, DELHI.
110092

M/S SWADESHI POLYTEX LTD

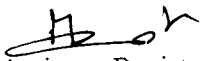
Appellant

C.C.E. GHAZIABAD

MISC ORDER NO. 760/07-EX.
STAY ORDER NO. 933/07-EX.

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 476/07-EX. dated 17-8-07
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. GHAZIABAD

C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR,
GHAZIABAD 201302

2. Adv. / Consult SH. PRIYADARSHI MANISH, ADV.

FLAT NO. 27, VIDYUT NIKUNJ,
PLOT NO. 112, I.P. EXT, PATPARGANJ,
DELHI

3. SDR.

~~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

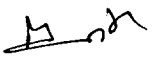
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

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/COD 230/07, E/S 1753/07, E/A No.2132/2007

(Arising out of order in original No.14/Comm/Gzb/2007 dated
22.3.2007 passed by the Commissioner of Central Excise,
Ghaziabad)

M/s. Swadeshi Polytex Appellant
(Rep. by Shri S. Ganesh, Sr. Advocate)
Shri Priyadarshni Manish, Advocate)

Vs

CCE, Ghaziabad Respondent
(Rep. by Shri V.K. Agarwal, JDR)

Coram: Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. C.N.B. Nair, Member(Technical)

Date of Hearing: 17.8.2007

Final Order No. ...476/07 Ex
Stay order No. 933/07 Ex
Per S.S. Kang:- Misc order No. 760/07

The application is filed for condoning the delay of nine days.
In view of the reasons explained in the application, the delay in
filing the appeal is condoned. The COD is allowed.

2. Heard both sides. The applicant filed this application for
waiver of pre-deposit of duty of Rs.1,39,17,659/- and penalties.
The present impugned order is in pursuance to the remand order
passed by the Tribunal. Against the remand order passed by the
Tribunal, the appellants approached the Hon'ble Supreme Court

and Hon'ble Supreme Court vide order dated 20th July, 2000 disposed of the appeal filed by the appellant by passing the following order:-

“The Tribunal in the present case has remanded the matter to the Collector for a fresh decision after coming to the conclusion that there had been a denial of principles of natural justice. While remanding the case, the Tribunal however, upheld the finding of the Collector that the appellant herein will have no right to cross-examine the witnesses on whose statements the Collector had relied upon.

The point in issue in the present case was whether a commodity which is categorized as waste by the appellant can be regarded as good quality fibre by the department and excise duty levied thereon. In order to justify the levy of excise duty, the Collector had referred to and relied upon the statement of some persons who are alleged to have utilized the said waste for the purposes of spinning yarn.

The learned Counsel for the appellant submits that the appellant should be given an opportunity of cross-examining those witnesses in order to determine whether the waste in question should be categorized as fibre for the purposes of levy of excise

duty. He does not wish to cross-examine any other witness on those other statements to which reference may have been given.

In the facts and circumstances of the present case, we consider that this contention is well-founded. When the Collector has to decide afresh, he should. If he intends to rely upon the statement of any such person, given an opportunity of cross-examination to the appellant. The appeal is disposed of in the aforesaid terms. No costs."

3. The contention before us is that adjudicating authority passed the impugned order in violation to the direction given by the Hon'ble Supreme Court as no opportunity to cross-examine the witnesses was granted.

4. The contention is also that applicant filed a reply on 6.11.1992 in pursuance to the remand order passed by the Tribunal. The appellant also filed a detailed reply dated 1.6.1982. The adjudicating authority had not gone into the issues raised in the reply by the appellants and without affording an opportunity to cross examine the witnesses and again confirmed the demand and imposed penalties.

5. We have gone through the order passed by the Tribunal. We find that after passing the remand order by the Tribunal, the applicant filed a reply in November 1992. In the impugned order,

we find that, there is no finding regarding issues raised by the appellant in the reply. We find that the adjudicating authority disallowed the request for cross examination of witnesses only on the ground that purpose of cross-examination is not disclosed. We find that Hon'ble Supreme Court held that the Collector has to decide afresh, after granting opportunity of cross examination of witnesses to the appellant. In view of this direction, asking for purpose of examination has no relevance. As the impugned order is passed in violation to the direction given by the Hon'ble Supreme Court and the Tribunal, we set aside the impugned order, after waiving the pre-deposit of duty and penalties and remand the matter to the adjudicating authority to decide the case after affording an opportunity of hearing and cross examining and the witnesses and after taking into consideration the issues raised in both the replies. The appeal is disposed of by way of remand.

(Order dictated and pronounced in the open Court.)

(C.N.B. Nair)
Member(Tech)
MPS

(S.S. Kang)
Vice President