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

Appeal No. E/3803/2004 Date 22/05/2008

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

To :
M/S WINSOME YARNS LTD.(100%EOU)
M/S WINSOME YARNS LTD.(100% EOU), VILLAGE
KURANWALA, DERABASSI (PUNJAB)
M/S WINSOME YARNS LTD.(100%EOU) Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.**272/2008-EX **Excise** dated 30-4-08

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. CHANDIGARH
THE COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH, PLOT NO 19, SECTOR 17-C, CHANDIGARH
2. Adv. / Consult
MR.SIDHARTHA SEN, ADVOCATE
C-5/9, SAFDARJUNG DEVLOPMENT AREA.OPP IIT GATE. N. DELHI.
3. C.D.R.
4. ~~J.C.D.R.~~
5. Bar association. CESTAT. New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications. I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, 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.

E/3803/04

[Arising out of Order-in-Appeal No.418/CE/CHD/2004 dt.11.6.03 passed by the Commissioner(Appeals), Chandigarh)

For approval and signature:

Hon'ble Mr. S.S. KANG, VICE PRESIDENT
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?	:
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. Winsome Yarns Ltd — Appellant

Versus

CCE, Chandigarh — Respondent

Appearance

Shri Rupinder Singh, Adv. For Appellant

Sh. C.S.Rajput, Authorised Departmental Representative(DR) For Respondent

Coram: Hon'ble Mr. S.S. KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Date of decision: 30.4.08
FINAL Order No. 272/08-EX

Per S.S.Kang:

Heard both sides. The appellant filed this appeal against the impugned order whereby the benefit of Notification No.1/95-CE dt.4.1.95 was disallowed in respect of HSD oil which was procured by the appellant for the use in Fork lift as well as for captive power generation plant. The appellant is a 100% EOU and are availing the benefit of Notification No.1/95-CE which authorized 100% EOU to procure indigenous inputs as well as capital goods without payment of duty. The case of the revenue is that the appellants were also generating power for captive consumption by DG sets. The case of the revenue is that as per Annexure 1 to the Notification 1/95. the fuel, lubricants consumed for captive power plant are to be received with the approval of Asstt. Commissioner or Dy. Commissioner. The appellant is having the approval for receiving fuel for DG sets but the appellant have no approval to receive HSD oil for use in the forklift, therefore, the benefit of notification is not available to the HSD oil used in the forklift.

2. The contention of the appellant is that as per the notification, the appellants are entitled to receive material handling equipment including forklift without payment of duty and consumable also. The condition regarding getting the approval of Asstt. Commissioner or Dy. Commissioner was in respect of fuel lubricants and consumable for captive power plants. As the HSD oil is received without payment of duty and used in the forklift which is used as material handling equipment, therefore, the requirement for permission to received such oil is not required under notification.

3. We find that notification provides exemption from payment of duty in respect of the capital goods as well as raw-material procured by 100 EOU. As per item mentioned at S.No.3B of Annexure-I, the fuel, lubricants consumable for captive power plant are to be procured with the approval of the Asstt. Commissioner or Dy. Commissioner of Central Excise. Otherwise, 100% EOU can procure consumable without payment of duty and no permission is required. The appellant is receiving HSD oil which is

used in the forklift and the forklift is used in the handling material. Therefore, we find that the approval of Asstt. Commissioner or Dy. Commissioner to receive such HSD oil is not required. The impugned order is set aside and the appeal is allowed.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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