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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/3403/2004-3404/2004 Date 08/08/2008

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

To :
C.C.E. INDORE
THE COMMISSONER OF CENTRAL EXCISE, MANIK BAGH PALACE, P.B.-10, INDORE (M.P.)
C.C.E. INDORE Appellant

Vs

M/S PARASRAMPURIA INTERNATIONAL LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 569-570/08- **Excise** dated 4-8-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S PARASRAMPURIA INTERNATIONAL LTD.
   M/S PARASRAMPURIA INTERNATIONAL LTD., PLOT NO. 423-432 INDUSTRIAL AREA, PITHAMPUR, (M.P.)
2. Adv. / Consult SH. M.P. SINGH., ADV., 110, SAMAJ KALYAN APTTS. F-BLOCK, VIKAS PURI, N. DELHI-18
3. S.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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal Nos. 3403 - 3404 of 2004

[Arising out of Order-in-Appeal No. IND-I/134-135/04 dated 23.3.2004 passed by Commissioner [Appeals-I] Customs & Central Excise. Indore]

Date of Hearing/decision : 25.7.2008

For approval and signature:

Hon'ble Mr. M. Veeraiyan. Member (Technical)
Hon'ble Mr. D.N. Panda. Member (Judicial)

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

CC&CE. Indore — Appellant

Vs.

M/s Parasrampuria International Ltd., — Respondent

Appearance:

Shri M.M. Singh. DR for the Appellants

Shri M.P. Singh. Advocate for the Respondent

CORAM: Hon'ble Mr. M. Veeraiyan. Member (Technical)
Hon'ble Mr. D.N. Panda, Member (Judicial)

FINAL **ORDER NO. 569-570/08-Ex.**

Per M. Veeraiyan (for the Bench):

These two appeals by the Department are against the common orders-in-appeal No IND-I/134-135/04 dated 23.3.2004 of the Commissioner (Appeals).

2. We heard both sides.

3. The relevant facts, in brief, are as follows:-

a) The respondent, a 100% EOU, is manufacturing different categories of yarn namely cotton yarn and its blends and man made yarn i.e. polyester yarn and blend of polyester-cotton yarn and exporting the same as required. They have, during the course of manufacture of the above yarns, generated some wastes and rejects.

b) They have cleared such rejects and waste of different categories of yarn in the domestic market. In respect of 100% polyester and polyester cotton yarn, the rejects and wastes was more than 5% of the value of production of the respective items. However, in respect of other categories of yarn, the rejects were lower than 5%. As a result the overall percentage of rejects cleared was within the 5% value of overall production.

c) The original authority held that the 5% limits shall be applicable in respect of each category of yarn and, therefore, demanded differential duty in respect of quantity of yarn cleared in excess of 5% limit.

d) On appeal by the party, Commissioner (Appeals) held that the 5% limit shall be applicable on the total production and not for individual items of manufacture and allowed the appeal of the respondent.

4. Learned DR submits that in respect of certain varieties the rejects cleared is as high as three times the permissible quantity. He also submits that during the relevant period, the interpretation given by the Development Commissioner was that the bunching of rejects products for the purpose of allowing 5% limit at concession rate was not permissible.

5. Learned Advocate for the respondents submits that in terms of para 9.9. of EXIM policy, the rejects up to 5% of the value of production is permitted to be sold in the domestic area. The policy does not specify that the said 5% should be determined separately in respect of each of the product manufactured by the 100% EOU. On the other hand, para 9.9 begins with a reference to the entire production of EOU and goes to say that the reject is to be determined as 5% of the value of the production. They have not exceeded the 5% limit in respect of products taken together. In respect of synthetic yarn, the rejection was on the higher scale and in respect of others it has been on much lower scale.

6. We have carefully considered the submission from both sides and also perused the policy provision and the clarifications given by the Development Commissioner. If the 100% EOU manufactured only one product then there is no ambiguity about permissible limit for rejects; however when more than one product is manufactured , naturally a doubt arise as to how the 5% limit for the reject is to be determined. A reading of the policy provision shows that there is no conscious effort to fix 5% limit for each of the product cleared by the 100% EOU. The Development Commissioner, initially, vide letter dated 28.01.1999 clarified that bunching provision of para 9.24 of the Handbook of Procedure is not applicable to rejects. However, vide his subsequent clarification dated 6.6.2002, it has been clarified that entitlement of reject upto 5% of production will be determined in totality and not with reference to the specific items. Further, there cannot be a hard and fast rule about the quantity of rejects that may arise in respect of any product manufactured by 100% EOU. The EXIM policy permits rejects of a higher percentage subject to permission by the Development Commissioner in consultation with the Customs Authorities. In this case, when the respondent has sought clarification from the Development Commissioner it was clarified that the 5% limit is not applicable to each product separately. In these circumstances, respondent could not be expected to seek permission from the Development

Commissioner for a higher percentage. There is no finding that the rejects are artificially and falsely inflated. In view of the above, we are in agreement with the decision of Commissioner (Appeals) and do not find any reason to interfere with his order.

7. Accordingly, the appeals by the department are rejected.

(Dictated and pronounced in the open Court on 25.07.2008)

[M. Veeraiyan]
Member [Technical]

[D.N. Panda]
Member [Judicial]

[Pant]