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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/4989/2004 Date 04/08/2008

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

To :
C.C.E. JAIPUR-II
NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR

C.C.E. JAIPUR-II Appellant
Vs
M/S PERFECT THREAD MILLS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 543/08 **Excise** dated 30-7-08

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 PERFECT THREAD MILLS LTD.
   AMBERI, UDAIPUR (RAJASTHAN)
2. Adv. / Consult SH. HEMANT BAJAJ, ADV.,
   A-5, BASEMENT,
   LAJPAT NAGAR-III, N. DELHI-24
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. Office Copy
15. Guard file
16. EASY SERVICE TAX.

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No. 4989 of 2004

[Arising out of Order-in-Appeal No. 429 (RM) /CE/JP-II/2004 dated 7.7.2004 passed by Commissioner (Appeals II) Customs & Central Excise, Jaipur.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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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? : 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

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Commissioner of Central Excise Jaipur II — Appellant

Vs.

M/s. Perfect Thread Mills Ltd. — Respondent

Appearance:

Mr. V.Chaudhry, DR for the Appellant
Mr. Hemant Bajaj, Advocate for the Respondent

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of decision : 28.7.2008

FINAL **ORDER NO. 548/08-EX**

Per M.Veeraiyan (for the Bench):

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 429 (RM) /CE/JP-II/2004 dated 7.7.04 by which Commissioner (Appeals) upheld the order of the original authority which was in favour of the assessee.

2. Heard both sides.

3. The appellant manufacture what was known as cabled or multiple yarn with 'S" twist. A show cause notice was issued proposing to treat the said yarn as sewing thread and seeking to deny the benefit of exemption under Notification No. 35/95-CE dated 16.3.95 claimed by the assessee. The original authority, based on certain correspondence between the assessee and their customers came to the conclusion that the yarn was meant for use not as sewing thread but meant to be used in the manufacture of fabric generally as warp and as weft in chambrey fabric. He extended the benefit of the notification as the condition that the yarn should be meant for use in the manufacture of fabrics was satisfied. Commissioner (Appeals) has also found that mere 'S' twist to the multiple yarn can not make it as sewing thread and did not interfere with the decision of the original authority.

4. Learned DR submits that the definition for the sewing thread has undergone a change with effect from 23.7.96 from which date the yarn with "Z" twist was only defined as sewing thread and for the earlier period yarn either with "Z twist" or "S" twist can qualify for being considered as sewing thread. Since the dispute relates to period prior to 23.7.96, he seeks to set aside the orders of lower authorities.

5. Learned advocate for the respondent reiterates the findings of the Commissioner (Appeals).

6. We have carefully considered the submissions made from both sides. The original authority as well as Commissioner (Appeals) based on correspondences between the respondent and their Customers came to conclusion that the multi fold yarn was used for weaving and not as sewing thread and therefore, eligible for the benefit of Notification No. 35/95. No evidence has been adduced to upset the factual and concurrent findings of the original authority and the Commissioner (Appeals). Therefore, we do not find any justification to interfere with the order of the Commissioner (Appeals).

7. The appeal of the Department is, therefore, rejected.

(Operative part of the order pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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