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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/4300/2004 Date 28/07/2008

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

To :
M/S MALWA COTTON SPINING MILLS LTD.
RAIKOT ROAD, BARNALA

M/S MALWA COTTON SPINING MILLS LTD. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 525/08- **Excise** dated 24-7-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E. LUDHIANA
F BLOCK, RISHI NAGAR, LUDHIANA
2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW 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

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No. 4300 of 2004

[Arising out of Order-in-Appeal No. 339/CE/Appl/Ldh/04 dated 29.4.2004 passed by Commissioner [Appeals] Central Excise, Ludhiana]

Date of Hearing/decision: 23.7.2008

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?	NO
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

M/s Malwa Cotton Spinning Mills Limited — Appellant

Vs.

CCE, Ludhiana — Respondent

Appearance:
Shri K.K. Anand, Advocate for the appellant.
Shri H.K. Thakur, Jt. CDR for the respondent.

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

Final **ORDER NO. 525/2008-Ex**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner (Appeals) No. 339/CE/Appl/Ldh/04 dated 29.4.2004.

2. The relevant facts, in brief, are as follows:

(a) The applicant is a manufacturer of cotton and acrylic yarn and their blends falling under chapter heading 52 & 55 of the Central Excise Tariff Act, 1985. Appellant was clearing the goods to their depots and selling them from the depots. The assessment was provisional on the aspect of valuation.

(b) The original authority finalised the assessment for the month of March 2003 and held that there was short payment of duty on the sale of acrylic /polyester yarn and cotton viscose yarn and its blend amounting to Rs. 610684.11 and that there was excess payment amounting to Rs. 241334.35. He, therefore, held that ,after adjusting the excess payment, an amount of Rs. 369349.76 was payable.

(c) The claim of the appellant for adopting lower rate of duty which was effective from 01.03.2003 in respect of clearances made from the factory gate prior to 01.03.2003 but sold from depot after 01.03.2003 stands rejected. On the aspect of abatement claim of insurance the original authority disallowed the same for want of production of supporting documents.

(d) Commissioner (Appeals) agreed with the findings of the original authority.

3. Learned Advocate submits that rate of duty on acrylic yarn was reduced from 16% to 12% w.e.f. 01.03.2003 and the rate of duty on cotton viscose yarn was increased from 8% to 12% w.e.f. 01.03.2003. He submits that correct rate of duty has not been adopted by the original authority. He also submits that the failure of the authorities to exclude insurance charges claimed by the appellant on the ground that the same are not shown in the invoices on actual basis is legally incorrect.

4. Learned DR reiterated the findings of the Commissioner (Appeals).

5. We have carefully considered the submissions from both the sides. The original authority and the Commissioner (Appeals) have clearly held that the revised rate of 12% shall be applicable for acrylic polyester and viscose yarn and cotton yarn in respect of clearances affected from 01.03.2003 from the factory gate. They have also held that the date of actual sale from the depot are not relevant for the purpose of determining the rate of duty. The appellant was not able to show us that in respect of clearances effected prior to 01.03.2003 from their factory to the depots and sold from the depots, the authorities below have adopted the higher rate applicable w.e.f. 01.03.2003. Therefore, the appellant's submission in this regard is not acceptable. As regards the deduction on account of insurance charges, the same stands denied on the ground that no evidence has been produced by the appellant at the time of finalisation of the assessment. We do not find any reason to interfere with the order of the Commissioner (Appeals) on either of the above issues.

6. The appeal is, therefore, rejected.

(Operative part of the order was pronounced in the open Court on 23.07.2008)

[M. Veeraiyan]
Member [Technical]

[D.N. Panda]
Member [Judicial]

[Pant]