

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

Appeal No. E/5610/2004 - EX[DB]

Date 05/01/2009

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

To :
M/S JCT LTD.(SYNTHETIC FIBRE DIVISON
V.P.O.CHOHAL HOSHIARPUR
M/S JCT LTD.(SYNTHETIC FIBRE DIVISON

C.C.E.JALANDHAR

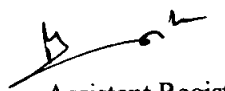
Appellant

Vs

Respondent

EX[DB] dated -31/12/08

I am directed to transmit herewith a certified copy of Final order No. 954/2008-
passed by the Tribunal under


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E.JALANDHAR

HD.QTR.AT CENTRAL REVENUE BUILDING SEC-17 CHANDIGARH

2. Adv. / Consult

~~MR. BALBIR SINGH~~

SH. BALBIR SINGH, ADV.,

~~MASTAN & CO, C-59, SAFDARJUNG ENCLAVE, NEW DELHI~~

3015, SECTOR-27-D, CHANDIGARH

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 Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3

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

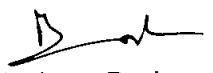
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagaraya Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

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Assistant Registrar
(Excise Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 5610 of 2004

(Arising out of order-in-appeal No. 472/CE/APL/JAL/04 dated 30.06.2004 passed by the Commissioner of Central Excise (Appeals), Jalandhar).

**DATE OF HEARING : 29.12.2008
DATE OF DECISION : 29.12.2008**

FOR APPROVAL AND SIGNATURE :

**HON'BLE MS. JYOTI BALASUNDRAM, VICE-PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (T)**

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

M/s JCT Limited

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VERSUS

CCE, Jalandhar

....

Appellant
(Rep by Sh. Balbir Singh, Adv.)

Respondent
(Rep. by Sh. M.M. Singh, DR)

**CORAM : HON'BLE MS. JYOTI BALASUNDARAN, VICE- PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (TECHNICAL)**

FINAL ORDER NO. 954/08- Ex

PER JYOTI BALASUNDARAM :

Vide impugned order, the Commissioner of Central Excise (Appeals) has upheld the confirmation of payment of Rs. 19,86,471/- together with interest on Nylon Chips emerging in the course of manufacture of 210 Denier variety of Nylon Yarn Filament out of caprolactum and upheld penalty of Rs. 40,000/- as imposed by the adjudicating authority.

2. We have heard both sides. The issue of dutiability of Nylon Chips is no longer *res integra* as it stands settled against the assessee by the Tribunal's decisions in **J.K. Synthetics vs Commissioner of Central Excise**, 2000 (122) ELT 38 (T), which has been followed in the case of **Shree Synthetics Ltd. vs Commissioner of Central Excise, Indore**, 2003 (161) ELT 433 (T). However, exemption in respect of Nylon Chips under Notification No. 67/95-CE having been held to be not available to the appellant, the credit on caprolactum of Rs. 15,19,845/-, reversed by the appellant, is required to be re-credited in the light of the said decisions. On the question of valuation, we find that the price of Nylon Chips sold by the appellant has been adopted for valuation of the Nylon Chips captively consumed. The assessee submits that in the case of Nylon Chips which are cleared from factory, the chips are subjected to spraying with nitrogen and then packed, while in the case of chips captively consumed, for the further manufacture of Nylon Filament Yarn, obviously no packing takes place as the Nylon Chips are captively consumed and, therefore, the costing of the product has to be taken as the basis for valuation

and the value of the Nylon Chips sold cannot be adopted for the purpose of valuation of the captively consumed Nylon Chips. This argument was also raised in the case of **Shree Synthetics Ltd. vs Commissioner of Central Excise, Indore** (supra) and accepted by the Tribunal by holding that the Assessing Authority has to value the goods on the basis of costing method and remitting the matter to the adjudicating authority to redetermine the value of Nylon Chips on the basis of costing method. Although the appellant submits that as per costing method the duty element would be Rs. 16,96,453/- as against the duty element confirmed of Rs. 19,86,471/-; in the absence of not arriving at the value on the costing method basis, we see no alternative but to remit the case for the purpose of re-determining the value of the Nylon Chips captively consumed to the adjudicating authority.

3. In the result, we hold that :

- (a) Nylon Chips are dutiable;
- (b) Duty liability is to be re-determined after arriving at the value of the Nylon Chips on the basis of costing method; and
- (c) While demanding duty adjustment is to be given of the credit already reversed by the assessee; and
- (d) The penalty is set aside in the light of the Tribunal's decision in the case of **Shree Synthetics Ltd. vs Commissioner of Central Excise, Indore** (supra). However, after finalization of demand of duty, it will be open to the adjudicating authority to decide whether penalty is liable to be imposed and if so, to what extent. Liability to interest under Section 11-

AB will be limited to the duty liability ultimately re-determined on re-computation.

4. The appeal is disposed of in the above terms.

(Dictated and pronounced in the open Court on the 29th day of December, 2008)

(JYOTI BALASUNDARAM)
VICE-PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay