TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Date 11/11/2008

Appeal No. E/2007/2008 - EX[DB] & E/S/1958/08

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

To :
M/S CHEEMA SPINTEX LTD.
VILL. KOLIMAJRA LALRU, DISTT. MOHALI
(PUNJAB)
M/S CHEEMA SPINTEX LTD. — Appellant

Vs

C.C.E. CHANDIGARH — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 859/08 & S.O.NO.1189/08-**EX[DB]** dated 31-10-08

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
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.G.S.BHANGOO
   631 (FF), SECTOR 11B, CHANDIGARH

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 - 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), Thyagaraya Road, T. Nagar,Chennai
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-1
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Stay Application No. 1958 of 2008 in Appeal No. 2007 of 2008

M/s Cheema Spintex Ltd. Appellant

Versus

CCE, Chandigarh Respondent

Appearance

Shri Vikrant Kackria, Advocate – for the appellant.

Shri C.S. Rajput, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri P.K. Das, Member (Judicial)**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 31/10/2008.

STAY Order No. 1189/08-EX Dated : ____________
FINAL ORDER No. 859/08-EX.

Per. P.K. Das :-

As the issue involved in this case is a narrow compass, the appeal is taken up for hearing with stay application.

2. The relevant facts of the case in brief are that the appellant are engaged in the manufacture of cotton yarn classifiable under chapter sub-heading No. 2205 12.10, 5205 13.10 & 5205 14.10 of the Schedule of the Central Excise Tariff. The appellant is a 100% EOU Unit. They cleared the goods to DTA under Notification No. 23/03-CE dated 31/03/03. The dispute relates to as to whether ~~that~~ the appellants are entitled to clear the goods under serial No. 3 or serial No. 4 of the table to the said notification. According to the appellant they are entitled to clear the goods under serial No. 3 as the condition of "such goods, if manufactured and cleared by the unit other than export oriented undertaking are not wholly exempt from duties of Excise or are not chargeable to "NIL" rate of duty." It is their submission that the goods are dutiable under Notification No. 29/04-CE dated 09/07/04.

3. It is contended by the revenue that the appellants are covered by serial No. 4 of the notification as the goods are wholly exempted from duties of Excise under Notification No. 30/04-CE dated 09/07/04. The Adjudicating Authority confirmed the demand of duty and imposed penalties.

Commissioner (Appeals) while deciding the stay application directed the applicant to deposit a sum of Rupees twelve lakhs towards duty and Rupees nine lakhs towards penalty. The appeal was dismissed for non-compliance of the stay order under Section 35F of the Central Excise Act, 1945.

4. After hearing both the sides and on perusal of the records, we find that the goods in question is covered under Notification No. 29/04-CE dated 9th July 2004 provides concessional rate of duty 4% Adv. It is seen that Notification No. 30/04-CE dated 09/07/04 provides the exemption of the goods in question subject to the notification shall not apply in respect of the goods on which credit of duty on inputs or the capital goods has been taken under Cenvat credit Rules, 2002. The learned advocate submits that Notification No. 30/04-CE relied upon by the revenue is conditional notification. In other words, the Notification No. 29/04-CE provides duty 4% Adv. and therefore the goods are not wholly exempted from duty. On perusal of the records and the submissions of the parties, we find that prima facie, the goods in question is not wholly exempted from duty and it is covered under serial No. 3 of the said notification. We have also noted that prima facie part of

the demand of duty about Rupees Twenty two lakhs is barred by limitation. In view of that, we hold that the appellant made out the prima facie case for waiver of pre-deposit of duty and penalty. The Commissioner (Appeals) rejected the appeal without going into the merits. Therefore, we set aside the impugned order and the matter is remanded back to the Commissioner (Appeals) to decide afresh on merits, without any pre-deposit. We make it clear that the observations made by us in this order would not influence to the parties while deciding the matter on merit. Stay application is disposed off. The appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(P.K. Das)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK