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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/6143/2004 - EX[DB] Date 20/05/2009

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

To :
C.C.E.LUDHIANA

F-BLOCK RISHI NAGAR LUDHIANA PUNJAB

C.C.E.LUDHIANA Appellant

Vs

M/S PREM INDUSTRIES. Respondent

I am directed to transmit herewith a certified copy of **Final order No.**328/2009- **EX[DB]** dated 13-5-09

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 PREM INDUSTRIES.

SHIV MANDIR STREET, OPP CENTRAL JAIL,TAJPUR ROAD LUDHIANA

2. Adv. / Consult

NONE

3 C.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Excise/Appeal No.6143/04

[Arising out of Order-in-Appeal No.580-602/CE/Appl./Ldh/2004 dated 31.08.2004 passed by the Commissioner (Appeals),Ludhiana].

Date of Hearing:27.03.09
Date of decision: 13/5/09

For approval and signature:

Hon'ble Justice Mr.R.M.S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

CCE, Ludhiana ...Appellant

Vs.

M/s.Prem Industries ... Respondent

Present for the Appellant : Shri Amit Jain, SDR
Present for the Respondent : None

Coram: Hon'ble Justice Mr.RMS Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Technical Member

FINAL ORDER NO. 328/09-SB DATED:________

PER: RAKESH KUMAR

This is an appeal by the Revenue against Order-in-Appeal No.580-602/CE/Appl./Ldh/2004 dated 31.08.2004 passed by the

Commissioner (Appeals), Ludhiana by which the Commissioner (Appeals) set aside the duty demand of Rs.30,551/- pertaining to the clearance of the Respondent's own fabrics valued at Rs.7,63,785.

2. The facts leading to the present appeal are, in brief, as under:-

3. The Respondents are engaged in the manufacture of processed knitted man-made fabrics chargeable to Central Excise duty under sub-heading 6002.93 of the tariff. Notification No.14/02-CE dated 1.3.2000 (Sl.No.16) prescribes a concessional rate of duty of 12% for "processed knitted or crocheted fabrics other than of cotton, -subject to condition that the same have been made from "fabrics, whether processed or not", on which appropriate duty of central excise chargeable under First Schedule to the Central Excise Tariff and additional duty of excise chargeable under Additional Duties of Excise (Goods of Special Importance) Act, 1975 [AED(GSI)), read with any Notification for the time being in force or additional duty of customs leviable under section 3 of the Customs Tariff Act 1975, as the case may be, has been paid. The Respondents were availing of the concessional rate of duty under the above mentioned Notification. A Show-cause-notice was issued to them denying concessional rate of duty under this Notification and demanding differential duty of Rs.70,028/- on the ground that the processed knitted fabrics valued at Rs.17,50,877/- had been cleared during the period from 1.9.02 to 31.3.03 by availing the exemption under this Notification while the

same was not available, as the processed knitted fabrics had not been made out of duty paid fabrics. The Assistant Commissioner vide Order-in-Original dated 11.02.04 confirmed the duty demand of Rs.70,028/- alongwith interest and besides this, imposed penalty of equal amount under rule 25 (1) of Central Excise Rules, 2002. The Commissioner (Appeals) vide Impugned Order-in-Appeal dated 31.08.04 set aside the duty demand of Rs.30,551/- on the ground that during the period of dispute, the processed fabrics valued at Rs.7,63,785/- had been processed out of grey fabrics manufactured in their own factory from yarn stage, in respect of which as per the Board's Circular No.680/71/02-Cx dated 10.12.02, concessional rate of duty of excise under Notification No.14/02-CE dated 1.3.2000 (Sl.No.16) was available. It is this portion of the Commissioner (Appeals)'s order which has been challenged by the Revenue in this appeal on the ground that on enquiries being made by the Asstt. Commissioner, it was found that the Respondent had purchased 3604.590 Kgs. of grey un-processed fabric from the market and had manufactured processed fabric valued at Rs.4,55,330/- out of the said grey unprocessed fabric and that the Respondent had manufactured and cleared only 2514.590 Kgs of processed fabric valued at Rs.3,08,455/- manufactured out of yarn purchased from the market and thus the Respondent were entitled to concessional rate of duty in terms of Board's Circular dated 10.12.02, only in respect of the fabrics valued at Rs.3,08,455/- made out of yarn purchased from the market and not in respect of remaining fabric valued at Rs.4,55,330/- made out of grey/unprocessed fabrics purchased from the market.

4. None appeared for the Respondent.

5. Heard Shri Amit Jain, ld. DR. reiterated the grounds of appeal and pleaded that while the Commissioner (Appeals) has extended concessional rate of duty in respect of processed fabrics valued at Rs.7,63,785/- by treating the same as having been manufactured by the Respondent from yarn stage, the factual position is that only 2514.590 Kgs. of processed fabrics valued at Rs.3,08,455/- had been manufactured out of the yarn purchased from the market and the remaining fabrics valued at Rs.4,55,330/- had been manufactured out of the grey/unprocessed fabric purchased from the market and in respect of that fabric, the concessional rate of duty was not available. He also emphasised that the "unprocessed knitted fabrics, other than of cotton" are fully exempt from duty vide sl. No.14 of the Notification No.14/2002 CX dated 1.3.02 subject to condition that the same have been made out of duty paid yarn and no Cenvat Credit of duty paid on the inputs had been taken and that since the raw-material for the grey knitted fabrics i.e. the yarn purchased from the market is deemed to be duty paid, the grey unprocessed fabrics bought from the market have to be treated as fully exempted from duty and in terms of Hon'ble Supreme Court judgement in the case of CCE, Vadodara Vs. Dhiren Chemical Industries reported in 2002 (139) ELT 3 (SC), for the purpose of an exemption Notification, which exempts the finished

products from duty wholly or partially subject to condition that the goods have been manufactured out of duty paid material, the goods which are fully exempt from duty would not be treated as goods on which the duty has already been paid and therefore, the processed knitted fabrics manufactured from unprocessed knitted fabric purchased from the market are not entitled to concessional rate of duty under Notification No.14/02-CX.

6. We have carefully considered the submissions of the ld. DR and have perused the records. Notification No.14/02-CE dated 1.3.2000 (Sl.No.16) prescribes concessional rate of duty of 12% to "processed knitted or crocheted fabrics, other than of cotton", subject to condition that the same have been made from fabrics whether processed or not, on, which appropriate duty of central excise chargeable under First Schedule to the Central Excise Tariff and AED(GSI)] read with any Notification for the time being in force, or additional duty of customs leviable under section 3 of the Customs Tariff Act 1975, as the case may be, has been paid. As per Explanation II read with explanation VII to this Notification, for the purpose of conditions of this Notification, textile yarn, textile fibres or fabric shall be deemed to have been duty paid even without production of the documents evidencing the payment of duty thereon. As per the Board's Circular No.680/71-02-CX dated 10.12.02, by virtue of Explanation II, as amended by Explanation VII, under Notification No.14/02/CE ,- textile

fibre, yarn and fabrics bought from the market are deemed to be duty paid and thus a manufacturer engaged in processing of fabrics alongwith weaving or knitting or crocheting fabric within the same factory from textile fibre or yarn bought from the market would attract excise duty of 12% ad-valorem. In this case there is no dispute about the availability of the concessional rate of duty under Notification No.14/02-CX (sl.No.16) to the processed knitted fabrics made in the appellant's factory from yarn stage in a continuous process. The dispute is only in respect of the quantity of the processed, knitted fabrics which were manufactured out of grey/unprocessed fabric purchased from the market, which according to the Revenue cannot be treated as duty paid fabrics, as sl. No.14 of the same exemption Notification also exempts knitted unprocessed fabrics from the whole of the duty subject to certain conditions specified therein. We do not agree with this contention of the Revenue as Explanation II to the Notification clearly states that for the purpose of the conditions specified in this Notification, the textile yarn, fibre or fabrics shall be deemed to have been paid duty even without production of documents evidencing the payment of duty thereon. In this case 3604.590 KgS. of processed fabrics valued at Rs.4,55,330/- have been made out of grey-unprocessed knitted fabrics purchased from the market and in view of the provisions of Explanaction II to this Notification, the same have to be treated as duty paid. Moreover exemption to unprocessed knitted fabrics in sl. NO.14 of this notification is not an unconditional exemption and is subject to condition that such unprocessed knitted fabrics had been made out of duty paid yarn and no Cenvat credit has been taken and in view of this any unprocessed fabric purchased from the market cannot be treated as unconditionally exempt from duty and hence non-duty paid on the basis of Hon'ble Supreme Court judgement in the case of CCE, Vadodara Vs. Dhiren Chemical Industries. In view of the above, we find no infirmity in the impugned order. Revenue's appeal is dismissed.

[Pronounced in the open Court on 13/5/09].

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita