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

E/2018/2001
S APPEAL BRANCH

Appeal No. E/2018&2845/2002

Date 17/06/2009

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

To :
VANASTHALI TEXTILES INDUS LTD ← 2. SH.YOGESH GUPTA,(FCCS)
E-67,GREATER KAILASH ENCLAVE-I,N.DELHI-48

VANASTHALI TEXTILES INDUS LTD Appellant
Vs
C.C.E. JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 404-405/2009- dated 27-5-09

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

Assistant Registrar

Copy to :
1. Respondent
   C.C.E. JAIPUR
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult SH. R. KRISHNAN, ADV.,
   297-E, POCKET-II, PHASE-I
   MAYUR VIHAR, DELHI-91
3. C.D.R
4. ~~PCDR~~
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
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.2018 of 2001 and E/2845 of 2002-D

[Arising out of Order-in-Appeal No.418(KDT)CE/JPR-I(224)/2001 dated 25.06.2001 & 649(SN)CE/JPR-1(387)2002 dated 31.10.2002, both passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision: 27.05.2009

For approval and signature:
Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see 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?	:	N
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

M/s. Vanasthali Textiles Industries Ltd. ...Appellants
(Rep. by Shri R. Krishnan, Advocate)

Vs.

CCE, Jaipur ....Respondent
(Rep. by Shri B.S. Suhag, DR)

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

Final Order No.404-405/09-EX Dated:27.05.2009

Per P.K. Das:

In this case, the Tribunal by Final Order No.21-22/03-D dated 15th January, 2003 rejected the appeal filed by the appellant. Thus, the appellant filed appeal before the Hon'ble Supreme Court against the order of the Tribunal. By Judgment and Order dated 26.10.2007, the Hon'ble Supreme Court as reported in 2007 (218) ELT 3 (S.C.), remitted the matter to the Tribunal to consider the case on the basis of the observations made thereunder. In compliance of the Order of the Hon'ble Supreme Court, both the appeals are being taken up together for hearing.

2. The relevant facts of the case, in brief, are that the appellants are a 100% Export Oriented Unit (EOU), engaged in the manufacture of "Terry Towels" classifiable under sub-heading No.6302.00 of Schedule to the Central Excise Tariff Act, 1985. The appellant cleared the finished goods partly in Domestic Tariff Area (DTA) on payment of concessional rate of duty in pursuance of the Notification No.8/97-CE dated 1.3.97. The condition of notification is that the goods have been manufactured wholly from the raw materials produced or manufactured in India. The appellants received imported material viz. CARBOXYMETHYL CELLULOSE FINFIX 30 known as sizing material used for sizing of single yarn to give strength to the yarn during weaving, after which the woven towels were washed to remove completely the sizing material and Ultra Fresh N.M. which is used for anti-bacteria and anti-fungus treatment of terry towels. The Original Authority denied the exemption benefit on the ground that the sizing materials used by the appellants were not produced or manufactured in India. The Commissioner (Appeals) upheld the Adjudication Order. The Tribunal vide Final Order dated 15.1.2003 rejected the appeals filed by the appellants. The appellants filed appeal

before the Hon'ble Supreme Court. By Order and Judgement dated 26.10.2007, the Hon'ble Supreme Court remanded the matter to the Tribunal with certain directions as under:-

> "19. Since the reliance on dominant ingredient test in regard to cost variation has not been considered by CEGAT though the same has relevance, the matter is remitted to the CEGAT to consider those aspects. It shall also consider whether the items can be considered as "consumable" on the facts of the case.
>
> 20. Dealing with a case under a Sales Tax statutes, i.e. Andhra Pradesh General Sales Tax Act, 1957, this Court held that the word "consumable" takes colour from and must be read in the light of the words that are its neighbours "raw material", "component part", "sub-assembly part" and "intermediate part". So read, it is clear that the word "consumables" therein refers only to material which is utilised as an input in the manufacturing process but is not identifiable in the final product by reason of the fact that it has got consumed therein. It is for this reason, a departure was made from the concept that "consumable" fall within the broader scope of the words "raw materials". Reference in this connection can be made to the view express in Deputy Commissioner of Sales Tax (Law), Board of Revenue

pure dye used for dyeing warp yarn in the course of manufacture of blue denim, benefit of exemption Notification No.8/97(supra) is not available. He submits that in the said case, the Tribunal viewed indigo pure dyeing is present in the finished goods. But, in this case, sizing imported materials is not present in the finished goods viz. towels.

4. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the Tribunal in the case of Commissioner of Central Excise, Coimbatore Vs. Meridian Industries Ltd. (Tribunal-Chennai) held that the imported wax disc used in the manufacture of cotton yarn cannot be considered as a consumable and has to be held as raw materials and benefit of Notification No.8/97 is not available. He further submits that the Hon'ble Supreme Court in the case of CCE, Vs. Ballarpur Industries Ltd. – 1984 (43) ELT 804 (S.C.) held that an input qualify as a raw material is depending upon the test of its importance and indispensability for the process. He also submits that the Tribunal in the case of Commissioner of Central Excise, Raigarh Vs. Santogen Exports Ltd. – 2009 (233) ELT 269 (Tribunal-Mumbai) while dealing exemption notification no.8/97 (supra) in respect of Dilasoft, a softening agent, an imported material used in the manufacture of Towel would be examined by the lower authority and matter was remanded for fresh decision in the light of Apex Court judgment in the case of Vanasthali Textile Industries Ltd. (supra).

5. After hearing both the sides and on perusal of the records, we find that the Notification No.8/97-CE dated 1.3.97 exempted the finished goods, rejects and waste or scrap specified in the schedule to the Central Excise Tariff Act, 1985 and produced or manufactured, in a 100% Export Oriented Undertaking or a Free Trade Zone wholly from the raw materials produced or manufactured in India and allowed to be sold in India. The main contention of the ld. Advocate is that the sizing agent is the consumable item and, therefore, it is not raw material. He strongly relied upon the Exim Policy. In this connection, he drew the attention of the Bench to the definition of raw materials as given in para 7(11) and 7 (34) respectively of 1992-1997 Exim Policy as under:-

> "7(11) 'Consumable' means any item which participates and is required for a manufacturing process, but does not form a part of the end product. Item which are substantially or totally consumed during a manufacturing process will be deemed to be consumables.
>
> 7(34) 'Raw material' means (i) basic materials which are needed for the manufacture of goods, but which are still in a raw, natural, unrefined and unmanufactured state, and
>
> (ii) for a manufacturer, any material or goods which are required for manufacturing process, whether they have actually been previously manufactured, or are processed or are still in a raw or natural state."

6. Thus, the issue has to be decided as to whether the sizing material is a consumable or not. Ld. DR relied upon the decision of the Tribunal in the case of Century Denim & Ors. (supra). We find that in the said case, Blue Denim was present in the finished goods. But in the present case, sizing materials is not available in the Towels. Therefore, it appears that the said case law is not applicable herein. The use of certain materials as "inputs", "raw materials", "consumables" etc. are depending upon the use in the process in a particular context. So, it is required to examination of the use of sizing material during the manufacturing process of finished goods. We find that the Tribunal in the case of Santogen Exports Ltd. (supra) while dealing with the exemption Notification No.8/97 in respect of Dilasoft, a softening agent, an imported materials used in the manufacture of Towels, remanded the matter to the Original Authority to decide afresh in the light of the decision of the Hon'ble Supreme Court in the case of Vanasthali Textiles Industries Ltd. (supra). In our view, it is fit and proper that the present matter should be remanded to the Original Authority to decide afresh on the basis of the evidences and process of manufacturing as to whether sizing materials are consumables or raw materials.

7. In view of the above discussions, we set aside the impugned order and remand the matter to the Adjudicating Authority to decide afresh in the light of the decision of the Hon'ble Supreme Court in the case of

Vanasthali Textile Industries Ltd. (supra). The appellant is at liberty to take all the points before the Adjudicating Authority during de novo adjudication. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 27.05.2009.

(M. Veeraiyan)
Member (Technical).

(P.K. Das)
Member (Judicial)

Ckp.