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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/4228/2004 - EX[DB] Date 23/06/2009

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

To :
M/S WINSOME YARNS LTD. (100% EOU)
VILL. KURANWALA, DERABASSI (PUNJAB)

M/S WINSOME YARNS LTD. (100% EOU) Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 418/2009- **EX[DB]** dated 16-6-09

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
PLOT NO 19, SEC 17-C, CHANDIGARH
2. Adv. / Consult SH. RUPENDER SINGH, ADV., 3015, SECTOR-27-D, CHANDIGARH
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
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11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 4228 OF 2004-EX

[Arising out of Order-in-Appeal No. 442/CE/CHD/2004 dated 17.06.2004 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

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 the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would 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. Winsome Yarns Ltd. — Appellant

Vs.

CCE, Chandigarh — Respondent

Appearance:

Shri Rupender Singh, Advocate for the appellants;
Shri K.P. Singh, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 16th June, 2009

Final **ORAL ORDER NO.** 418/2009-Ex **dated** ________

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner No. 442/CE/CHD/2004 dated 17.6.2004.

2. Heard both sides.

3. The appellant is a 100% E.O.U. and manufacture yarn and clear them mainly for export and the quantity permitted by the Development Commissioner into DTA. In respect of permitted quantity, it is claimed that the appellant supplied the same as inputs to manufacturer of excisable goods who ultimately exported the said product. For this purpose, it is claimed that they produced CT-2 certificate issued in favour of the recipient unit by the officer of the in-charge of the recipient unit. On the basis of the said certificate it was claimed that they have effected the clearances duty free in terms of Rule 19(2) of the Central Excise Rules, 2002 read with the notification No. 43/2001-CE (NT) dated 26.6.2001. The original authority held that as a 100% E.O.U. they are governed by special provisions and, therefore, they cannot avail the benefit under Rule 19(2) of the Central Excise Rules and the said order has been upheld by the Commissioner (Appeals).

4. Learned Advocate submits that as a 100% E.O.U., clearances effected by them to DTA were within the permissible limit as per EXIM

Policy. Rule 19 does not exclude 100% E.O.U. from its purview. He also relies on the decisions of the Tribunal in the case of Kurt-O-John Shoe Components (I) Ltd. vs. Commr. of C.Ex & Cus., Noida, reported in 2003 (154) ELT 651 (Tri.-Del.) and in the case of Paras Fab International vs. CCE, Jaipur, reported in 2003 (153) ELT 549 (Tri.-Del.) which held that Rule 13 of Central Excise Rules, 1944 was applicable in respect of clearances made from 100% E.O.U. He also relies on the decision of the Tribunal in the case of CCE, Madurai vs. Renuga Soft-X Towels, reported in 2007 (217) ELT 589 (Tri.-Chennai) wherein it has been held that Rule 19 of Central Excise Rules, 2002 and the notification No. 43/2001-CE(NT) are pari materia to Rule 13 of erstwhile Rules, 1944 and Notification No. 47/2001-CE(NT) issued under Rule 13.

5. Learned SDR reiterates the findings of the Commissioner (Appeals).

6. We have carefully considered the submissions from both sides. There is no dispute before us that the clearances made by the appellants is beyond the limit prescribed by the Development Commissioner. In respect of such clearances duty shall be payable, if they are made to general category of buyers. In the present case, the appellant have chosen to supply to special category of buyers covered under Rule 19(2) of the Central Excise Rules, 2002. We agree with the submission of the learned Advocate that Rule 19 does not exclude the clearances from 100% E.O.U. from its purview. The decisions of the Tribunal in the case

of Kurt-O-John Shoe Components (I) Ltd. and Paras Fab Internatioanl (supra) support the contention of the learned Advocate.

7. In the light of the above, we set aside the order of the lower authorities and allow the appeal with consequential relief.

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK

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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/4228/2004 - EX[DB] Date 07/01/2009

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

To :
M/S WINSOME YARNS LTD. (100% EOU)
VILL. KURANWALA, DERABASSI (PUNJAB)
M/S WINSOME YARNS LTD. (100% EOU) Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 18/2009-EX[DB]** dated 01-01-09 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
PLOT NO 19, SEC 17-C, CHANDIGARH
2. Adv. / Consult
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Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No.4228 of 2004-EXCISE BRANCH

[Arising out of Order-in-Appeal No.442/CE/CHD/2004 dated 16.06.2004 of the Commissioner of Central Excise & Customs (Appeals), Chandigarh]

Date of Hearing/ Decision:22.12.2008

For approval and signature:

Hon'ble Mr.D.N. PANDA, JUDICIAL MEMBER

Hon'ble Mr.RAKESH KUMAR, Member (Judicial)

M/s. Winsome Yarns Ltd. (100% EOU) ...Appellant
[Rep. by None.]

Vs.

CCE, Chandigarh ....Respondent
[Rep. by Shri H.K. Thakur,DR]

CORAM: Hon'ble Mr. D.N. Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Final Order No. 18/09-EX /Dated:22.12.2008

Per D.N. Panda:

None appeared for the appellant. Shri Manish Panda, Advocate appears and submits that Mr. Upendra Singh, Advocate, who has to appear in this case, has informed him that he has been stuck up somewhere.

2. We have gone through the case records and we have seen that this matter has been adjourning for the last several months beginning from May 2008. The defaulter appellant was not represented on 24.07.08 and the matter was adjourned to 21st August, 2008. Then the matter is before this Bench. As the matter is very old, keeping the same alive shall serves no useful

purpose. It is noticed that the appellant is not interested in pursuing the matter. We have also gone through para 4.10 of order of adjudication, which was placed by the ld. DR. That particular paragraph was the reasoning for unsuccessful adjudication for the appellant, which is reproduced for the sake of convenience as reading:

> *4.10 A comprehensive reading of all these provisions would clearly make out that Exim Policy 1997-2002 did not provide for clearances against CT-2/Annesure-1 certificates without payment of Central Excise duty and the exemption of duty free clearances by an 100% EOU has been excluded/barred by Rule 2 of the Concessional Duty Rules read with proviso to the Section 5A(1) of the Central Excise Act. Further I find that the CEGAT decisions in the case of M/s. Kurt-O Johan Shoe Components (I) Ltd. vs. Commissioner of Central Excise reported as 2003 (154) ELT 651 and in the case of M/s. Paras Fab International vs. Commissioner of Central Excise reported as 2003 (153) ELT 549 were in relation to Chapter X procedure and Rule 13 of the erstwhile Central Excise Rules and have no relevance in view of issuance of New Central Excise Rules, 2001/2002. In view of my findings in the aforesaid paras, I hold that the clearance by a 100% EOU to a DTA Unit against CT-2/Annesure-1 certificates is irregular and that the demand under Section 11A(1) of the Central Excise Act for recovery of Central Excise duty as per Section 3 of the Central Excise Act is sustainable against the Noticee. Further, I find that the Noticee is liable to pay interest chargeable under section 11AB of the Central Excise Act."*

3. The appellant sought the remedy from the Appellate Authority, who had also given the reasoning in hearing the appeal, which is as follows:-

> *"I have carefully examined the case records including the Appellants submissions made in writing and at the time of personal hearing and observe that the main reason for demand and proposed recovery of Central Excise duty in the Show Cause Notice was that there was no provision of Exim*

Policy 1997-2002 for duty free clearances of goods to a DTA Unit for manufacture of export goods against Annexure-I certificate and as such, clearances made by the Appellants against Annexure-I were irregular. I find that the plea of the Appellants is not applicable/relevant in the case of clearances by a 100% EOU as such clearance has not been provided by the Exim Policy and as such the exemption of duty free clearances by an 100% EOU has been excluded by Rule 2 of the Concessional Duty Rules read with proviso to Section 5A of Central Excise Act. I also find that the CEGAT decision reported at 2003 (154) ELT 651 in the case of M/s. Kurt-O-John Shoe Component (I) Ltd., vs. Commissioner of Central Excise are not relevant in view of New Central Excise Rules, 2001/2002 as these were in relation to Chapter X procedure and Rule 13 of the erstwhile Central Excise Rules. The Adjudicating Authority has rightly held that the clearances by a 100% EOU to a DTA Unit against CT-2/Annexure-1 certificate is not regular and the demand under Section11A (1) of Central Excise Act for recovery of Central Excise duty is sustainable. I fully agree with the Adjudicating Authority in confirming the demand and imposing the penalty. In view of the above, the appeal is dismissed and Order-in-Original is upheld."

4. Having gone through the aforesaid reasoning given by both the authorities, we note that whether the appellant has still a case. But without any assistance from the appellant, we dismiss the appeal for non-prosecution.

Order dictated & pronounced in open court on 22.12.2008.

01-01-2009.

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Aj