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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/1932/2009 - EX[DB] Date 19/08/2009
E/S/1987/2009&E/M/576/2009-EX

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

To :
M/S SWADESHI POLYTEX LTD.
KAVI NAGAR, INDUSTRIAL AREA, GHAZIABAD.
(U.P.)

M/S SWADESHI POLYTEX LTD. Appellant
C.C.E. GHAZIABAD STAY ORDER NO.817/2009-EX Vs
MISC ORDER NO.520/2009-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.532/2009- EX[DB]** dated 24-7-09

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. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
2. Adv. / Consult
MR.PRIYADARSHI MANISH,ADV
27, VIDYUT NIKUNJ, PLOT NO 112, I.P.EXTENSIOIN, PATPARGANJ, DELHI
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
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 1932 /2009 -Ex(BR)

[Arising out of Order-in-Original No. 15-Comm./GZB/2009 dated 20.5.2009 passed by Commissioner of Central Excise, Ghaziabad]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	[illegible]
4	Whether Order is to be circulated to the Departmental authorities?	[illegible]

M/s. Swadeshi Polytex Ltd. Appellant

Vs.

Commissioner of Central Excise Respondent
Ghaziabad

Appearance:

Shri Ganesh, Sr. Advocate with Shri Priyadarshi Manish and Anjali J.Manish, Advocates for the Appellant
Shri B.K. Singh, Jt.CDR for the Respondent

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 24.7.2009

FINAL **ORAL ORDER NO. 532/09-EX**

Per Justice R.M.S. Khandeparkar (for the Bench):

The appeal taken up on board pursuant to the order passed in Misc. application No. M/576/2009.

2. Heard the learned advocate Shri Ganesh for the appellant and Shri B.K. Singh, learned Jt. CDR for the respondent.

3. Though the impugned order is sought to be challenged on various grounds, it is not necessary to address all those grounds and suffice to refer to only one ground that the impugned order has been passed without application of mind and in arbitrary manner.

4. The records disclose that this is a third round of litigation and inspite of specific direction by the Apex Court in earlier round of litigation, i.e. when the matter had reached the Apex Court in Civil Appeal No. 4728 of 1992, the Hon'ble Supreme Court by order dated 20.7.2000 had remanded the matter with the specific direction that in case the adjudicating authority intends to rely upon the statements of the persons which have been recorded in the course of investigation, then the opportunity should be given to the appellants to cross examine those persons. Inspite of this specific direction, the authority has failed to offer such opportunity and the appellants had

again to approached the Tribunal, whereby by order dated 17.8.07 passed in Appeal No. 2132/2007, the Tribunal had remanded the matter with specific direction to afford an opportunity of hearing and cross examination of witnesses before deciding the matter.

5. Records disclose that though the notices were issued to four persons for the purpose of cross examination, they did not appear before the authority. It has been recorded that nonappearance of those persons discloses that they are related to the appellants and have facilitated the party by way of non-appearance and that therefore their cross examination was not necessary. With the said observation, the adjudicating authority proceeded to dispose of the matter. However, while disposing the matter without addressing to any of the issues sought to be raised in the matter, the same was disposed of by following observations:-

> "Thus, it proves that they had fraudulently cleared polyester fibre / tow in the garb of un-cut crimped waste and also suppressed production of fibre resulting in short payment of duty amounting to Rs.1,39,17,659.60 (Rupees One crore Thirty Nine Lakh Seventeen Thousand Six Hundred Fifty Nine and sixty paise)."

6. With the above observations without analysing the record and without considering the points sought to be raised and without disclosing any reasoning, the adjudicating authority confirmed the demand in terms of show cause notice and imposed the penalty and ordered confiscation of goods. As rightly submitted by the learned advocate for the appellants it shows total arbitrary exercise of powers by the adjudicating authority.

While deciding the matter, the adjudicating authority has to analyse the materials on record, consider the points which are raised and give its findings on those points supported by proper reasoning. No such exercise has been done by the adjudicating authority in the matter and on that ground itself, the impugned order is not sustainable and is required to be set aside and the matter to be remanded to the concerned authority to decide the matter afresh after hearing the appellant and after complying with the directions of the Supreme Court and of the Tribunal. It is pertinent to note that matter relates to the show cause notice issued in 1978. We are already in the year 2009. In the circumstances, while we expect full cooperation from the appellants and prompt action from the adjudicating authority in disposing of the appeal as expeditiously as possible and in any case prior to end of this year.

7. The appeal is disposed of in the above terms. We make it clear that we have not expressed any opinion on merits of the case.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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