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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/4673/2004 - EX[DB]

Date 12/10/2009

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

To :
M/S ARIHANT TEXTILE INDS.
RAHON ROAD, VILL.- MATTEWARA, LUDHIANA

M/S ARIHANT TEXTILE INDS. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 774/ 2009 EX[DB]** dated 23-9-09

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. LUDHIANA
F BLOCK, RISHI NAGAR, LUDHIANA
2. Adv. / Consult
MR.SUDHIR MALHOTRA.
13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 23.9.2009

Central Excise Appeal No.4673 of 2004

Arising out of the order in original No.63/Ldh/2004 dated 25.6.2004 passed by the Commissioner of Central Excise, Ludhiana.

For Approval and Signature:

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

1	Whether Press Reporter 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 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Arihant Textile Industries .... Appellants
a unit of M/s. Arihant Industries Ltd.

Vs.

C.C.E., Ludhiana .... Respondent

Appearance:

Shri Sudhir Malhotra, Advocate for the appellants/applicants
Shri P.K. Singh, Authorized Departmental Representative (SDR) for the Revenue

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

Final Oral Order No. 774/09-EX

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 63/Ldh/2004 dated 25.6.2004.

2. Heard both sides extensively and perused records.

3. The relevant facts , in brief , are that the appellant M/s Arihant Industries Ltd. is having a unit by name, M/s Arihant Textile Industries. They manufacture man-made fabrics falling under Chapter 55 of the CETA, 1985. They have cleared the fabrics manufactured by them to their depot and sold the goods from there. The duty was paid at the time of clearance from the factory. The appellant has filed declaration in terms of clause (iv) to the second proviso to Rule 173C in respect of fabrics manufactured by them. The Department, on the basis of investigation, felt that the appellant had sold the fabrics cleared from their factory at higher prices from the depot and that they also collected excise duty in excess of what has been paid by them at the time of clearance from the factory. Accordingly, a show cause notice dated 4.4.2000 was issued proposing demand of duty of Rs.9,40,538/- under the proviso to Section 11A and also proposing recovery of Rs.53,95,043/- under Section 11D besides proposing penalties under various sections. The appellant filed reply and agreed to produce the details to prove that the calculations of differential / excess duty in the show cause notice was wrong but failed to do so and the Commissioner has confirmed the demand of duty under Section 11A and amounts under Section 11D besides imposition of penalty as per the impugned order.

4. The learned Advocate assails the order of the Commissioner on various grounds. He submits that the show cause notice proceeded on the erroneous assumption that the average duty paid per unit during the year 1994-95 was 8.51% as against the actual percentage of duty paid at 10.01% and therefore, there has been excess collection of duty at the time of sale from the depot. He submits that for subsequent years also the average rates of duty adopted by the Department were on the lower side as compared to what they have actually paid. He also submits that they were eligible for deemed credit for the period from 4.9.96 to 4.11.97 and that they had utilised the deemed credit and paid only the balance of duty in PLA at the time of clearance of the fabrics. As a result, the duty paid by them should be treated as duty paid in PLA plus the deemed credit utilised by them at the time of clearance of the fabric. These submissions though have been noted, by the Commissioner the same have not been properly appreciated by him as he has merely recorded that in the documents annexed to the show cause notice there was a note indicating "quantity sold and duty recovered are .... net of deemed credit". He also submits that after clearance from the factory sale, in some cases, have been made at lower prices compared to prices at which the duty was paid and the department has chosen to rely only on instances of sale on higher price and demanded duty.

5. The learned SDR submits that the appellant, in spite of specific assurance to furnish the relevant details before the adjudicating authority, failed to do so in spite of sufficient time having been granted. In the circumstances, the order has been passed on the basis of available records.

6. We have carefully considered the submissions from both sides. The submissions by the learned Advocate as above are relevant and may go to the root of the demand confirmed. However, we also notice that the Commissioner has passed the order in the absence of relevant records which the appellants assured to produce before the Commissioner . In view of the above, we deem it appropriate to set aside the order of the Commissioner and remand for fresh consideration after granting reasonable opportunity of hearing to the appellants. The appellants are directed to produce the details assured by them within three months from the date of receipt of this order and the Commissioner thereafter shall decide expeditiously and latest by 30th June, 2010. We make it clear that we have not expressed any views on the merits of the case.

7. The appeal is disposed of on the above terms.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/