TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. C/653 /2005, E/2167/05 Date 27/08/2008

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

To :
M/S SHREE GOPAL VANASPATI, 11-12TH KM STONE
DELHI ROAD, HISAR, HARYANA-125 044.

M/S SHREE GOPAL VANASPATI & VICE - VERSA — Appellant
Vs
THE COMMISSIONER OF CENTRAL EXCISE, DELHI V, ROHTAK — Respondent

I am directed to transmit herewith a certified copy of **Final order** No. C/322/08 & E/639/08 DATED 28.07.08 passed by the Tribunal under Section 129. (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   THE COMMISSIONER OF CENTRAL EXCISE, DELHI V, ROHTAK
   17P SECTOR-1 ROHTAK, HARYANA
2. Adv. / Consult
   MR.BIPIN GARG, ADV.
   B-1/1289,A-VASANT KUNJ, NEW DELHI
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010.Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate. new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy (2)
16. Guard file (2)

Assistant Registrar
(Customs Appeal Branch)

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

COURT – II

CUSTOMS APPEAL NO. 653 OF 2005 & EXCISE APPEAL NO. 2167 OF 2005

[Arising out of Order-in-Appeal No. 129/AKG/RTK/2005 dated 18.03.2005 passed by the Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, 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?	
2.	Whether it would 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?	

M/s. Shree Gopal Vanaspati — Appellants

Vs.

CCE, Delhi-V, Rohtak
& VICE VERSA — Respondent

Appearance:

Shri Atul Gupta, C.S., for the appellants;
Shri R.K. Verma, Departmental Representative, for the Revenue

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 28th July, 2008

FINAL ORDER NO. C/288/08 **dated** 22/12/08
—do— E/639/08

Per S.S. Kang:

Heard both sides.

2. Appellants as well as Revenue filed appeal against Order-in-Appeal passed by the Commissioner (Appeals).

3. Brief facts of the case are that the appellants made import of Soyabin Oil and Palm Oil and availed benefit of Notification No. 16/2000-Cus dated 1.3.2000. The notification provides concessional rate of duty to vegetable oil imported for manufacture of oil normally known as vanaspati or refined. A show-cause notice was issued to the appellants demand duty in respect of 86.002 M.T. which was short delivered at port and in respect of 71.851 M.T. short received in the factory. The adjudicating authority confirmed the demand and imposed penalties. The Commissioner (Appeals) set aside the demand in respect of 86.002 M.T. which was short delivered at port and confirmed the demand in respect of 71.851 M.T. on the ground that the same has been received by the appellants and appellants failed to show that the same has been used for intended purpose.

4. Contention of the appellants is that palm oil and soyabin oil are in liquid form and there is some spilling at the time of loading and unloading. The oil in question was imported at Kandla port and transported to Hissar by tankers. Contention is that there is no allegation against the appellants that the goods imported were diverted by the appellants for other purposes. The appellants relied upon the decision of the Hon'ble Supreme Court in the case of BPL Display Devices Ltd. vs. CCE, Ghaziabad, reported in 2004 (174) ELT 5 (SC).

5. Revenue also filed appeal whereby demand in respect of 86.002 M.T. of oil was set aside. Contention of the Revenue is that the appellants are liable to pay duty in respect of this quantity short received at the port and the appellants are not entitled for the benefit of notification in respect of this quantity.

6. Contention of the importer is that as the quantity in question has not been received by them as per the case of the Revenue, therefore, no demand can be made.

7. We find that the appellants made import of soyabin oil and palm oil by availing benefit of notification No. 16/2000-Cus. The said notification provides concessional rate of duty in respect of vegetable oil imported for the manufacture of vanaspati. There is no allegation against the appellants that the appellants have diverted the goods for other purposes. In similar circumstances the Hon'ble Supreme Court in the case of BPL Display Devices Ltd. (supra) has held that the benefit

of notification cannot be denied in respect of goods lost due to leakage or damage. Hon'ble Supreme Court has held as under:-

"2. It is not in dispute that the appellant had imported parts of picture tubes for manufacture of colour picture tubes. Both the input and the manufactured items are covered by the Notifications. It is also not in dispute that a small percentage of the imported parts were damaged in Transit and could not be used for manufacture picture tubes during the year 2000-2001. The appellant claimed the benefit of the aforesaid Notifications in respect of the entire lot of the parts imported relying, inter alia, upon the earlier decision of the Tribunal in National Organic Chemical Indus. Ltd. v. Collector of Customs (Import), Mumbai, 2000 (126) E.L.T. 1072 which had held that the benefit of the Notifications could not be denied in respect of goods which were intended for use for manufacture of the final product but could not be so used due shortage or leakage. The Notifications relied upon in the decision in National Organic Chemical Indus. Ltd. (supra) are substantially similar to the present Notification., The appeal preferred by the Department from the decision of the Tribunal was dismissed by this Court on 20th February, 2002 – Commissioner of Customs vs. M/s. National Organic Chemical Indus. Ltd. [C.A. No. 6764/99]. The Tribunal, however, relied upon its earlier decision in the case of Commissioner of Central Excise, Meerut v. M/s. BPL Display Devices Ltd. reported in 2002 (147) ELT 912 to hold against the appellant. This Court following the affirmation of the Tribunal's reasoning in National Organic Chemicals Indus. Ltd. (supra) on 20.2.2002, allowed the appellant's appeal. This appeal must therefore be necessarily allowed. We are of the view that no material distinction can be drawn between the loss on account of leakage and loss on account of damage. The words 'for use' used in similar exemption Notifications have also been construed by this Court earlier in the State of Haryana v. Dalmia Dadri

Cement Ltd., 1987 (Suppl) SCC 679 to mean 'intended for use'. According to this decision the object of grant of exempton was only to debar those importer/manufactures from the benefit of the Notifications who had diverted the products imported for other purposes and had no intention to use the same for manufacture of the specified items at any stage.

3. In the circumstances, the appeal is allowed but without any order as to costs."

As in the present case there is no allegation that the appellants diverted the goods for other purpose we find merit in the contention of the appellants. Appeal filed by the appellants is allowed. In respect of appeal filed by the Revenue as the goods in question was not received by the appellants and this fact is not in dispute, therefore, we find no infirmity in the impugned order whereby the demand in respect of the goods in question is set aside. Appeal filed by the assessee is allowed and the appeal filed revenue is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 28th July, 2008
RK