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

Appeal No. C/376 /2005 - CU[DB] Date 10/11/2008

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

To :
OSWAL WOOLLEN MILLS LTD
G.T.ROAD, SHERPUR, LUDHIANA, PUNJAB

OSWAL WOOLLEN MILLS LTD — Appellant
Vs
THE COMMISSIONER OF CUSTOMS, AMRITSAR — Respondent

I am directed to transmit herewith a certified copy of **Final order** No. C/572/08-CUS DATED 20.10.08 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 CUSTOMS, AMRITSAR
THE MALL, AMRITSAR, PUNJAB
2. Adv. / Consult
MR.BALBIR SINGH, MASTAN & CO,
C-5/9,SAFDARJUNG ENCLAVE,N.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 - 3
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
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-1
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

~~ST~~ C/376/~~07~~ 5

[Arising out of Order-in-Appeal No.29/Cus/Appl/LDH/05 dt.21.2.05 passed by the Commissioner(Appeals), Ludhiana)

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 : Department Authorities:

M/s. Oswal Woollen Mills Ltd. Appellant

Versus

CCE, Ludhiana Respondent

Appearance

Shri Rupinder Singh, Adv. For appellant
Shri Vijay Kumar, Authorised Departmental Representative(DR) for respondent

Coram: Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final

Date of decision: 20.10.08
Order No. C/572/08

Per S.S.Kang:

Heard both sides. The appellant filed this appeal against the impugned order whereby the benefit of Notification No.21/2002-Cus dt,1.3.02 was denied. The notification provides concessional rate of duty to the raw wool of average fibre diameter 32 microns and above classifiable under Tariff Heading 51.01 of the tariff.

2. Brief facts of the case are that the appellants made import of the Scoured Wool and filed a bill of entry dt.31.10.02. The goods were assessed to duty as per declaration. The appellants paid duty and got cleared the goods. Subsequent to the clearance of goods, the appellants filed an appeal against the assessment order claiming the benefit of Notification No.21/02 on the ground that the wool imported by the appellant as fibre diameter more than 32 microns. The Commissioner(Appeals) of Customs rejected the appeal.

3. The contention of the appellant is that the wool, in question, is having fibre diameter more than 32 microns, therefore, they are entitled for the benefit. The appellant submitted that the test report issued by New Zealand Wool Testing Authority Ltd. dt.3.9.02 shows that the diameter of the wool is 42.5 microns. Therefore, they are entitled for the benefit of notification.

4. The revenue submitted that at the time of clearance of goods, the appellant had not claiming the benefit of notification. As the goods were cleared without retaining any sample, now after the clearance of goods, it is difficult to verify the claim of the appellant that the wool in question is having diameter more than 42.5 microns. If the benefit of that notification was claimed at the time of clearance of goods, the sample would have been taken and sent for chemical examination to verify the diameter of the fibre. The contention is that after clearance of goods when no sample has been retained, it is difficult to say that the fibre diameter is as per the notification.

4. We find that the appellant filed a bill of entry without claiming the benefit of notification. The notification provides concessional rate of duty in respect of the wool of average fibre diameter of more than 32 microns. The

goods were cleared after payment of appropriate duty and subsequent to the clearance ~~after claiming~~ the benefit of notification for home consumption, ~~In these circumstances~~ The appellant's claim as to whether the ~~as the notification provides concessional rate of duty to the wool of~~ average fibre diameter of the wool is 32 microns or above cannot be verified after clearance of the goods, as the appellant had not made any request to retain the samples at the time of clearance of goods. In these circumstances, we find no merit in the appeal, the same is dismissed.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(..akesh Kumar)
Member Technical

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