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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/815 /2005 - CU[DB] Date 11/12/2008

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

To :
M/S SHRIVATSA INTERNATIONAL LTD.
(100% EOU) VILLAGE. GODHRAULI. G.T.ROAD.
P.O.AUNG, DISTT. FATEHPUR (UP)
M/S SHRIVATSA INTERNATIONAL LTD. Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of Final order No.C/649/08-CUS. DATED 03.12.08

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
C.C.E. LUCKNOW
7-A. ASHOK MARG. LUCKNOW
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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-15
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing: 20.11.2008
Date of pronouncement: 3 .12.2008

Customs Appeal No.815 of 2005

Arising out of the order in original No.22/Commissioner/LKP/2005 dated 6.6.2005 passed by the Commissioner of Customs, Lucknow.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of 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

Appellants — Respondent

M/s Shrivatsa International Ltd. vs. C.C., Lucknow

Appearance:

Shri R.K. Hasija, Advocate for the appellants
Shri L.B. Yadav, Authorized Departmental Representative (DR) for the Revenue

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

Final Order No. C/649/08-

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner dated 6.6.2005.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

(a) The appellant-company is a 100% EOU. They were granted LOP dated 28.1.2003 permitting manufacture of knitted fabrics/ processed dyed or printed fabrics/ sarees/ dresses/shirting/ suiting/furnishing fabrics and made ups and readymade garments. The appellants imported 100% Polyester fabrics falling under Chapter 55 without payment of duty availing the benefit of exemption notification No.54/07 dated 3.6.97.

(b) The appellants have cut the fabrics imported by them into shapes and cleared them as 'un-stitched readymade garments' to M/s. G.N. Rubbertech (P) Ltd. Calcutta, another 100% EOU , on the basis of a CT-3 Certificate issued by the jurisdictional Central Excise Authorities to receive such 'un-stitched readymade garments'.

(c) A show cause notice was issued alleging that what was removed by them cannot be called as readymade garments and that the appellants have not fulfilled the condition No 6 of the Notification No.53/97. Accordingly, the Commissioner demanded duty of Rs.14,15,210/- on the goods imported and also imposed a penalty of Rs.2,00,000/- on the appellants.

4. Ld. Advocate made the following submissions:-

(a) The appellants imported the goods as per their requirements and as permitted in the LOP. They processed the goods in the customs bonded warehouse by cutting them in to the required shapes and sizes; they did not stitch the garments but cleared the same to another 100% EOU as deemed export. They were not required to or expected to monitor the export obligations of a unit, which has received materials form them on deemed export basis.

(b) The removal by the appellants was on the basis of CT-3 Certificate issued by the jurisdictional Central Excise officers of Calcutta, and the receipt of the goods has been duly acknowledged by the recipient unit and the connected documents were countersigned by the jurisdictional central excise authorities.

(c) The fabrics cut by them into required shapes and sizes and cleared by them with out stitching should be treated as readymade garments. He relies on the HSN Notes relating to Chapter 62, which reads as follows:-

> " *This Chapter also covers un-finished or incomplete articles of the kind described therein, including shaped textile fabric for making such articles and shaped knitted or crocheted fabrics for making articles or parts of articles of Heading No.62.12."*

(d) Alternatively, even if un-stitched fabrics cannot be treated as readymade garments, the same should be treated as made-ups and for the said proposition, he relies on the clause 7(a) of Section Notes relating to Section XI dealing with Textile and Textile Articles., according to which, made-ups also means "cut otherwise than into squares or rectangles".

(e) Further, as a 100% EOU in terms of Condition 7 of Notification No.53/97, the imported goods could be "cleared to warehouses authorised to carry on manufacturing process or other operations under Section 65 of the Customs Act." In this connection, he also relies on paras 3 and 4 of the Board's Circular No.71/2002-Cus dated 30.10.2002, permitting the transfer/supply of capital goods imported/procured or goods manufactured, produced or packaged in an EOU to another EOU. which are reproduced below:-

> *"3. The matter has been considered by the Board. Paragraph 6.14 of the Exim Policy 2002-2007 provides that transfer of manufactured goods from one EOU/EPZ/EHTP/STP unit to another EOU/EPZ/EHTP/STP/SEZ unit will be allowed. Further, it provides that capital goods may be transferred or given on loan from one EOU/EPZ/EHTP/STP/SEZ unit to another EOU/EPZ/EHTP/STP/SEZ unit with prior permission of the concerned Development Commissioner/Customs authorities. Corresponding provisions exist in Chapter 7 (paragraph 7.11) of the Exim Policy, which deals with SEZ scheme. A plain reading of these provisions makes it clear that inter unit transfer of manufactured goods and capital goods imported/locally procured under the EOU/EPZ/EHTP/STP/SEZ Scheme is allowed under the Exim Policy.*
>
> *4. In view of this, you may kindly allow transfer/supply of capital goods imported/procured or goods manufactured, produced or packaged in an EOU/ EPZ/EHTP/STP/SEZ unit to another EOU/EPZ/EHTP/STP unit without payment of duty. Suitable amendments incorporating specific provisions for such supplies would be made in the Notification No.133/94-Cus, dated 22.06.94 at the appropriate time."*

(f) The question of demand of duty under the above mentioned circumstances does not arise. Imposition of penalty when the clearances were effected on the basis of CT.-3 Certificate issued by the jurisdictional central excise authorities is not justified.

5. Ld. DR made the following submissions:-

(a) The LOP granted specifically mentions the goods, which are required to be manufactured and exported by the appellants. The un-stitched fabrics even if cut to required sizes and shapes cannot be treated as readymade garments. In common parlance, nobody shall supply the un-stitched fabrics cut to required sizes and shapes as readymade garments and nobody will purchase the same as readymade garments. The cutting to shape may be one of the processes in the manufacture of the readymade garments but this alone will not lead to manufacture of readymade garments. The HSN Notes will apply to imported goods and the same has only limited application in respect of the goods cleared by a central excise assessee. Merely by cutting into shape, the goods imported classifying under Chapter 55 cannot be held to be classifiable under Chapter 62 as readymade garments or as made-ups under Chapter 6307.

(b) The appellants have not used the imported goods for the intended purposes i.e. for the purpose of manufacturing readymade garments or for made-ups. There is no proof that what was cleared on deemed export basis is permitted for export under LOP. Condition No.3 of the Notification specifically envisages the manufacture/production, using the imported goods and the same should be construed as manufacture or production of goods as specified in the above LOP. Condition No.4 envisages that the goods manufactured / produced should be exported. This should be interpreted as an obligation to export goods mentioned in the LOP. Since they have not fulfilled the conditions, the duty demand and penalty should be sustained. Ld. DR also submitted that the Condition No.6 is clearly violated.

(c) Ld. DR was earlier asked to obtain a verification report regarding the factual position to whether the recipient unit has received the materials and used them for further manufacture and whether final products were exported. Ld. DR produced a verification report in pursuance of our directions which reads as follows:-

" It is to inform you that M/s. Shrivatsa International Ltd. had sent 06 consignments of unstitched readymade garments to M/s.G.M. Rubber Tech Pvt. Ltd. Distt.24, Pargana, West Bengal, which, falls under the jurisdiction of Central Excise, Barasat Division of Kolkata-III Commissionerate. A report in this regard was called for from them, they reported as under:-

This is to report that M/s. G.N. Rubber Tech Pvt. Ltd., Kolkata was a fraud party. There was no physical export from their unit. Cases booked against the unit to recover the duty evasion. The letter of permission (L.O.P.) of the unit has been suspended by the Development Commissioner. The unit is closed since 2004."

In view of the report of the Kolkata-III Commissionerate, it cannot be ascertained whether the unstitched readymade garments sent to them were stitched and therefore exported as 'readymade garments'."

6.1. We have carefully considered the submissions from both sides and perused the relevant records. The case of Department, as per the show cause notice, is that the appellant removed unstitched fabrics to the 100% EOU in Calcutta ; such unstitched fabrics can not be considered as ready made garments as mentioned in LOP; such clearances can not be counted towards fulfilment of export obligation and hence there is short fall in export obligation. In view of the above, the conditions under Notification53/97 dated 3-6-97 have not been fulfilled in respect of imported raw materials as they have not been used for the intended purpose.

6.2. We hold that the un-stitched fabrics even if cut to required sizes and shapes cannot be treated as readymade garments/made-ups as normally, nobody shall supply such un-stitched fabrics as readymade garments/made ups and nobody will purchase the same as readymade garments/made ups. These are made ready for making garments but by no stretch of imagination they are 'ready made garments/made ups'. These unstitched fabrics could not have been physically exported to fulfil the export obligation as per LOP. When that being the case, the supply to another 100% EOU can not qualify as deemed export.

6.3. The claim that the un-stitched fabrics cut to required sizes and shapes should be treated as readymade garments/made-ups based on HSN notes and interpretative rules deserves to be rejected out right. We are not dealing with the assessment of the goods at the time of import. We are dealing with the goods cleared from a 100% EOU and which are claimed to have been manufactured. The cutting to shape may be one of the processes in the manufacture of the readymade garments but this alone will not lead to manufacture of readymade garments. We agree with the submission of the Ld DR that the HSN Notes can be applied to imported goods and the same has only limited application in respect of the goods cleared by a central excise assessee.

6.4. M/s. G.N. Rubbertech (P) Ltd. Calcutta, 100% EOU , was issued with a CT-3 Certificate by the jurisdictional Central Excise Authorities to receive such 'un-stitched readymade garments'. We are unable to appreciate as to how such a certificate has been issued by the authorities. The removal by the appellants was on the basis of CT-3 Certificate issued by the jurisdictional Central Excise officers of Calcutta, and the receipt of the goods has been duly acknowledged by the recipient unit and the connected documents countersigned by the jurisdictional central excise authorities. The department could not confirm as to whether M/s. G.N. Rubbertech (P) Ltd. Calcutta has received the so called unstitched garments and further processed and exported the ready made garments.

6.5. However, the claim that as a 100% EOU in terms of Condition 7 of Notification No.53/97, the imported goods could be "cleared to warehouses authorised to carry on manufacturing process or other operations under Section 65 of the Customs Act." and the reliance placed on Board's Circular No.71/2002-Cus dated 30.10.2002, permitting the transfer/supply of capital goods imported/procured or goods manufactured, produced or packaged in an EOU to another EOU are acceptable.

7. In view of the above, we hold that the "unstitched fabrics" cannot be treated as ready-made garments/made-ups and therefore, cannot be treated as final product to be manufactured by the 100% EOU and to be exported in terms of LOP. However, the said unstitched fabrics could be treated as clearance of imported materials as such as permitted under condition 7 of the said Notification governing 100% EOU Scheme. Inasmuch as the goods cleared under CT -3 certificate is shown to have been received by the Calcutta based 100% EOU as mentioned in the show cause notice itself, and in the absence of contrary evidence, the goods should be held to have been received by the said unit and

action for violation, if any, requires to be taken by the officers in-charge of the recipient unit. In other words the demand of duty, imposition of penalty on the appellants are not justified.

8. The appeal is allowed with consequential relief.

(Pronounced in open Court on 3 .12.2008)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/