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/348 /2005 Date 16/07/2008

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

To :
M/S POLYGLASS ACRYLIC MFG. CO., (P) LTD
89-90, INDUSTRIAL AREA, PHASE-I, PANCHKULA,
HARYANA

M/S POLYGLASS ACRYLIC MFG. CO., (P) LTD — Appellant

Vs

COMMISSIONER OF CENTRAL EXCISE, DELHI-I,
NEW DELHI — Respondent

I am directed to transmit herewith a certified copy of Final order No. C/194/08-CUS. DATED 11.06.08

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 COMMISSIONER OF CENTRAL EXCISE, DELHI-I,
DELHI-IV, NEW CGO COMPLEX, NH-IV, FARIDABAD.

2. Adv. / Consult MR.PREM RANJAN KUMAR
LG-F1, E-13/29 HARSH BHAWAN,
CONNAUGHT PLACE, 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 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. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Customs Appeal No. 348 of 2005

[Arising out of the Order-in-Appeal No. 04/CUS/APPL/DLH-IV/2005 dated 31/03/2005 passed by The Commissioner of Central Excise (Appeals), New Delhi.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri 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?	:	No
2.	Whether it would 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?	:	Yes
4.	Whether order is to be circulated to the Department Authorities?	:	No

M/s Polyglass Acrylic Mfg. Co. (P) Ltd. — Appellant

Versus

CCE, New Delhi — Respondent

Appearance

S/Shri V.K. Agarwal and Prem Rajan, Advocates – for the appellant.

Shri A.K. Madan, Authorized Representative (SDR) – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 11/06/2008.

Final Order No. C/194/08 Dated : 11/6/08

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the order in appeal, whereby refund of Rs. 26,28,773/- was rejected on the ground that appellant fail to show that burden of duty has not been passed on. Brief facts of the case are that appellant made import of Polymethyal Metha Acrylate Monomer in the year 1996. Goods were cleared on provisional assessment and duty has been paid as declared in the bills of entry. Subsequently, in July 1997, a show cause notice was issued for enhancement of value of the imported goods. The proceedings were dropped by Commissioner of Customs. The revenue challenged the order passed by Commissioner of Customs, dropping the proceedings and the Tribunal vide order dated 24/08/2000 set aside the order passed by the Commissioner of Customs and confirmed the demand of Rs. 42,11,864/- and also imposed penalty of Rs. Forty lakhs. Appellant challenged the order passed by the Tribunal before Hon'ble Supreme Court and Hon'ble Supreme Court only granted stay regarding recovery of amount of penalty. As appellant unable to obtain stay in respect of demand of duty, the appellant paid the demand confirmed by the Tribunal in December 2001. The Hon'ble Supreme Court vide order dated 31/03/03 set aside the order passed by the Tribunal and allowed the appeal of the appellant.

2. In pursuance to the order passed by Hon'ble Supreme Court, appellant filed a refund claim for refund of the amount in dispute i.e. Rs. 26,28,773/- only as the appellant had availed the credit of Rs. 15,83,091/- out of the total demand of Rs. 42,11,864/-. The Adjudicating Authority allowed the refund claim and directed that the amount in question be credited to the Consumer Welfare Fund on the ground that appellant fail to show that burden of duty has not been passed on. Commissioner (Appeals) upheld the order passed by the Adjudicating Authority.

3. The contention of appellant is that the goods were imported in the year 1996 and the duty has been paid in pursuance to the order passed by the Tribunal in the month of December 2001 and the amount in question was shown as recoverable from the Customs in the balance sheet for the year 2001-2002 and till today this amount is shown as such. The refund was rejected on the ground that other refund claims which were granted to the appellant were not shown as recoverable from the Customs. The Commissioner (Appeals) held that there is no evidence on record to show that burden of the duty was not passed on to the buyers when goods are provisionally assessed. The contention is that goods were cleared on payment of duty at the value declared by the appellant in the bill of entry and subsequently a show cause notice for enhancement of the value and the proceedings were dropped by the Commissioner of Customs. The duty was subsequently paid after five years from the clearance of the goods and pursuance to the order passed by the Tribunal. Therefore, the finding that no evidence was produced the duty has not been passed on to the buyers during provisional assessment are not sustainable. The appellant produced a

certificate issued by Chartered Accountant showing that the amount in dispute is shown as recoverable in books of account and the same has not been passed on to the buyers as per the books of accounts maintained by the appellant and the price of final product manufactured out of the imported goods has not been increased after payment of the amount in question. In these circumstances, the contention is that the appellant produced to show that duty has not passed on to the customers.

4. The contention of revenue is that the amount in question has been paid by the appellant in pursuance to the order
but no evidence has been produced to prove
passed by the Tribunal that burden of duty has not been passed on. The revenue also submitted that other refund claims which were sanctioned and granted to the appellant were not reflected in their balance sheet as recoverable from the customers therefore it cannot be inferred that if the amount has been mentioned in the balance sheet recoverable has not been passed on to the customers.

5. We find that in this case the goods were imported in the year 1996 and goods were allowed to be cleared on

provisional basis and duty has been paid as per the declared value. A show cause notice for enhancing ~~enhanced~~ the value of goods were issued and the same was dropped by the Commissioner of Customs. On appeal filed by the revenue, the Tribunal set aside the order passed by the Commissioner of Customs and confirmed the demand. In pursuance to the order passed by the Tribunal, the appellant paid the duty in December 2001. On appeal filed by the appellant, the order passed by the Tribunal was set aside by the Hon'ble Supreme Court. The present refund claim in pursuance to the order passed by the Hon'ble Supreme Court, the revenue sanctioned the refund, however, the amount is credited in Welfare Fund on the ground that appellant fail to show that burden of duty has not been passed on.

6. We find that duty has been paid in the year 2001, however, the goods were imported and cleared in the year 1996. The appellant produced evidence to show that the amount in question was reflected in the books of account as recoverable from customers from the year 2001-2002 and till today it is shown as recoverable. The Chartered Accountant

also certified to the effect that amount in question has not been passed to the buyers as per the books of accounts maintained by the appellant and the sale price of goods manufactured ~~only~~ and imported goods was also not increased.

7. In these circumstances, we find merit in the contention of the appellant that burden of duty has not been passed on. The impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK