

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

Appeal No. C/84 /2007,504 /2007

Date 24/07/2008

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

To :
M/S GOENKA IMPEX PVT LTD
J-001, SARJAN TOWERS, GURUKUL ROAD.
AHMEDABAD - 380 052.

M/S GOENKA IMPEX PVT LTD

C.C.LUCKNOW

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.C/239-240/08-CUS. DATED 09.06.08
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

C.C.LUCKNOW, KENDRIYA BHAVAN,
SECTOR-H, ALIGANJ, LUCKNOW.

2. Adv. / Consult

MR.J M SHARMA, CONSLT.

G-31, BASANT ENCLAVE, 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 Publications (P) Ltd.. 1512-B. Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

8. Excise & Customs cases, B-37. Sector -I. 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-110066.
Principal Bench, New Delhi.

Customs Appeal No.84 & 504 of 2007/CST

[Arising out of Order-in-Original No.04/Commr/Lucknow/06
dt.6.10.06 passed by the Commissioner of Customs,Lucknow)

For approval and signature:

Hon'ble Mr. S.S.KANG, VICE PRESIDENT

Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

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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. Goenka Impex Pvt. Ltd.

Appellant

Versus

CC, Lucknow

Respondent

Appearance

Shri J.M.Sharma, Consultant for appellant

Sh. A.K.Madan, 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: 9.6.08

Order No. C/239-240/08

Per S.S.Kang:

Heard both sides. The appellant filed these appeals against the
impugned order passed by the Commissioner of Customs. The present
impugned order has passed in pursuant to the remand order passed by the
Tribunal. The Tribunal while remanding the order held as under:

"We have heard both sides and gone through the record. The Ld. Counsel has contended that even if the export goods, which were declared as printed fabric made out of spun yarn at the time of export to Nepal under DEPB scheme, had not been found to be so, after the test by the Textile Testing Laboratory vide report dt.23.12.03 and as such did not qualify for classification under S.No.46-A of Product Group Code 89 of DEPB Scheme, still the goods being printed fabric of non-spun yarn, were covered under S.No.47-A of Product Group Code 89 of DEPB Scheme and the appellants are entitled to the benefit of the same. He has also contended that the benefit of DEPB could be denied only by the DGFT authorities and not by the Customs Authorities. In our view, the contention raised by the learned counsel deserves to be accepted and the matter is required to be re-examined by the adjudicating authority. No doubt, the appellants initially declared the goods at the time of export to Nepal under DEPB Scheme as printed fabric made out of spun yarn falling under S.No.46-A of Product Group Code of DEPB Scheme. But the description of the goods was not found to be correct after the receipt of the report from the Textile Testing Laboratory. The case of the appellants was required to be examined, whether the goods were covered under S.No.47-A of the same code under the scheme or not. But the adjudicating authority had not examined the case from that angle. Similarly the issue, as to whether the DEPB benefit could be denied by the adjudicating authority itself or is to be denied by the DGFT, requires examination in view of the law laid down by the Tribunal in the case of Avon Appliances vs CC, Mumbai, 2004(172)ELT.465(T).

In view of the discussions made above, the impugned order is set aside and the matter is sent back to the adjudicating authority for fresh decision in the light of the discretions made above".

2. In the impugned order, Commissioner of Customs held that the goods exported by the appellant are not made out of spun yarn, therefore, they are not entitled for DEPB at S.No.46-A of DEPB schedule. The Commissioner of Customs further held that in respect of claim under entry at S.No.47-A is to be decided by the DGFT.
3. The contention of the appellant is that Commissioner has not complied with the directions given in the remand order and had not considered their claim under entry at S.No.47-A of DEPB schedule, therefore, order is not sustainable. The appellant also submitted after relying upon the decision of the Tribunal in the case of Avon Appliances vs CC, Mumbai reported in 2004(172)ELT.465 and upon the Board

Circular dt.3.6.97 that the Commissioner of Customs has no jurisdiction to decide the claim under DEPB scheme. The competent authority has to decide the claim of the DGFT and the customs authorities simply has to forward the shipping bill under which the goods were exported with the remarks in respect of exported goods.

4. The revenue also filed an appeal against the same impugned order asking for imposition of redemption fine on the ground that the appellant mis-declared the goods to get the higher benefit under DEPB scheme, therefore, goods are liable for confiscation under Section 13(1) of the Customs Act, 1962.

5. The appellant during the course of argument fairly submitted that they are not pressing their claim under S.No.46 of DEPB schedule and they are accepting the test report which shows that the printed fabric is not made out of spun yarn. The contention of the appellant is that they are entitled for DEPB benefits under entry 47-A of the scheme and as per the direction of the order passed by the Tribunal, their claim at S.No.47-A has not been considered by the Commissioner of Customs.

6. We find that the appellant to export the goods by declaring the same as fabric made of Spun yarn, the sample was taken and sent for the examination and goods were allowed to be exported on provisional basis. The test report of the sample shows that the fabric is not made out of spun yarn. The adjudicating authority held that as the fabric is not made out of spun yarn, therefore, the benefit of S.No.46-A of DEPB scheme is not available. This situation is accepted by the appellant. Now the appellant made claim at S.No.47-A of DEPB schedule. We find that as per the decision of the Tribunal relied upon by the appellant, the entitlement is to be decided by the DGFT authorities. In the impugned

order, the authority under DGFT may issue necessary orders regarding the claim of the appellant at S.No.47-A of the schedule and this copy of the order has been forwarded to the DGFT. In these circumstances, we find no infirmity in the impugned order in this regard.

7. The appellant also submitted that in the earlier proceedings, the adjudicating authority imposed a penalty of Rs.one lakh whereas in the remand proceedings, the penalty of Rs.2 lakhs has been imposed. The contention is that in the remand proceedings, the quantum of penalty can not be enhanced. We find that as the adjudicating authority at first time imposed penalty of Rs.one lakh and revenue has not filed the appeal against the impugned order hence the penalty is reduced to Rs.one lakh.

In respect of the appeal of the revenue regarding imposition of redemption fine, we find that in the present proceedings as the appellant misdeclared the ^{description} ~~discretion~~ of the goods to claim higher DEPB, therefore, goods are liable for confiscation and if the goods are liable for confiscation, the appellants are liable for fine also. The revenue relied upon the decision of the Hon'ble Supreme Court in the case of Weston Components Ltd. vs CC, New Delhi reported in 2000(115)ELT.278(SC). The Hon'ble Supreme Court held that redemption fine is imposable even after release of goods on execution bond. The goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the goods.

8. The contention of the appellant is that in the present case, the goods were not seized, therefore, fine cannot be imposed. We find in the present case, the goods were allowed to be exported on provisional basis

subject to the test report. As per the test report, the goods were not as per the declaration made in the shipping bill, therefore, goods are liable for confiscation. Hence the redemption fine is imposable. We find that redemption fine of Rs.one lakh will meet the justice. Therefore, the revenue's appeal is allowed to that extent. Appeals are disposed off as indicated above.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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