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

Appeal No. E/143 /2007 - SM[BR] Date 10/09/2008

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

To :
WINSOME SPINNERS
1, INDUSTRIAL AREA, SAI ROAD BADDI, DISTT.
SOLAN (HP).

WINSOME SPINNERS Appellant
Vs
C.C.E, CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1303 /2008 –SM[BR]** dated **20.8.2008**

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E, CHANDIGARH
   C.R.BUILDING, PLOT NO.19 SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   MR.SIDHARTHA SEN, ADVOCATE
   C-5/9, SAFDARJUNG DEVLOPMENT AREA,OPP IIT GATE, 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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 143 of 2007-SM

[Arising out of Order-in-Appeal No. 954/CE/CHD/06 dated 9.10.06 passed by the Commissioner (Appeals), Chandigarh.]

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : NA.
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes.

Winsome Spinners — Appellant

Vs.

Commissioner of Central Excise Chandigarh — Respondent

Appearance: Mr. Rupinder Singh, Advocate for the Appellant
Mr. Sansar Chand Gautam, DR for the Respondent

Date of decision : 20.8.2008

Final **ORDER NO. 1303/08-SM (BR)**

Per P.K.Das (for the Bench):

The relevant facts of the case, in brief, are that the appellant is a 100% EOU. They cleared the goods during the period from April, 2002 to December, 2002 in Domestic Tariff Area (DTA) by debiting the amount of duty through PLA. By letter dated 17.1.02, they informed the Commissioner of Central Excise that they may receive duty paid returned goods for remade, reprocessed etc. and asked for clarification under Rule 16(3) of Central Excise Rules, 2001 for availment of credit. Subsequently, they received the duty paid returned goods and availed credit in PLA. A show cause notice dated 29.4.03 was issued proposing demand of duty and imposition of penalty alongwith interest. Adjudicating authority confirmed the demand of duty of Rs.2,30,622/- and imposed penalty of equal amount under section 11AC of Central Excise Act, 1944 along with interest. Commissioner (Appeals) upheld the adjudication.

2. The learned advocate on behalf of the appellants submits that on the identical issue for the earlier period this Tribunal vide Final order NO. 1414/06-SM dated 18.9.06 set aside the demand of duty and penalty. He

submits that the present case relates to subsequent periods. He further submits that in this case, there is no short payment or non-payment of duty and therefore, the demand of duty is not sustainable.

3. The learned DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the appellants took the credit in their PLA without depositing the amount in treasury or in any authorised bank which is against the law. He further submits that there is no provision of taking such credit in PLA.

4. After hearing both the sides and on perusal of the records, I find that the appellant is a 100% EOU and cleared the goods to DTA on payment of duty through PLA. It is noticed that the appellant sought clarification for availment of the credit on the duty paid returned goods. It is seen that on similar situation Tribunal in the appellant's own case vide Final Order No. 1414/06-SM dated 18.9.06 held as under:-

> "4. The facts of the case stated in the impugned order bring out that no short-payment or non-payment of duty has taken place. The goods were cleared on payment of duty and later on brought back. Upon return, duty originally paid was taken as credit. Duty was again paid, when the goods were cleared for the second time. Thus, duty due remains paid. The objection raised is only about procedure followed in regard to return of goods. In this factual situation, duty demand and penalty are not sustainable. They are set aside and the appeal is allowed with consequential relief to the appellant."

5. On a query from the Bench, the learned advocate submits that this case relates to their letter dated 17.1.02. I find that on the identical issue, the Tribunal in appellant's own case for the earlier period allowed credit. Respectfully following the Final order dated 18.9.06 of the Tribunal, the impugned order is set aside. The appeal is allowed with consequential relief.

(Pronounced in the open Court)

(P.K.Das)
Member(Judicial)

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