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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/3485/2006 - SM[BR]

Date 10/09/2008

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

To :
M/S CELESTIAL KNITS & FABRICS
A-52,SECTOR -2, NOIDA.

M/S CELESTIAL KNITS & FABRICS — Appellant
Vs
C.C.E.NOIDA — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1304/2008 -SM[BR]** dated **12.8.2008**

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.NOIDA
   B-123, SECTOR 5, NOIDA.
2. Adv. / Consult
   MR.J M SHARMA
   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 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
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.3485 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.08/Commr./Noida/2006 dated 14.07.2006 passed by the Commissioner of Central Excise, Noida]

Date of Hearing/ Decision:12.08.08

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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.

M/s. Celestial Knits & Fabrics ...Appellants
[Rep. by Shri J.M. Sharma, Consultant]

Vs.

CCE, Noida ...Respondent
[Rep. by Shri A.K. Rastogi, DR]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No.1304/08-SM(BR)/Dated:12.08.2008

<u>Per P.K. Das</u>:

The Appellants filed this appeal against the order of the Commissioner of Central Excise whereby application for remission of duty was rejected.

2. Ld. DR raised preliminary objection of maintainability of the appeal. He submits that in pursuance of the first proviso to Section 35 (B) (1) of the Central Excise Act, 1944, the appeal filed by the Appellant against the order of the Commissioner of Central Excise is not maintainable. He further submits that proper course of the Appellant is to file appeal to the Revision Authority under Section 35 EE of the Act. He also submits that in this case the Commissioner of Central Excise has not passed the order as an Adjudicating Authority.

3. After hearing both the sides on the preliminary issue, I find that the First Proviso to Section 35 B(1) of the Act provides that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order passed by the Commissioner (Appeals) relates to a case of loss and a rebate of duty of excise, etc. In the present case, the impugned order was passed by the Commissioner of Central Excise and, therefore, the First Proviso to Section 35 B(1) of the Act is not applicable. The Appellant filed the application for remission of duty under Rule 21 of Central Excise Rules, 2002 before the Commissioner of Central Excise, who passed order as an Adjudicating Authority. Under Section 2 (a) of the Central Excise Act, 1944 "Adjudicating Authority" means any authority competent to pass any order or decision under this Act, but does not include the Central Board of Excise & Customs, Commissioner of Central Excise (Appeals)

or Appellate Tribunal. In the present case, Commissioner of Central Excise is competent to pass order under Rule 21 of Rules and the order was passed by the Commissioner as an Adjudicating Authority and the appeal is maintainable. Accordingly, preliminary objection raised by the ld. DR is overruled. Now, the appeal is taken up for disposal.

4. The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of 100% cotton knitted fabrics other than cotton knitted fabrics and ready made garments classifiable under sub-heading no.6002.92 and 6002.93 of the Schedule to the Central Excise Tariff Act, 1985. On 30.04.04 at 3.00 A.M., there was a fire at the Appellant's factory due to electric short circuit at the first floor of the factory. The Appellant filed application for remission of duty of the excisable goods destroyed on fire. The Commissioner rejected that application. Hence, the Appellant filed this appeal.

5. Ld. Advocate submits that the Appellant produced copy of Insurance Survey Report to prove their contention. He also submits that it is revealed from the Survey Report that the Appellant took reasonable steps for prevention of the fire. He relied upon the decisions of the Tribunal as under:-

(1) Khemka Adhesives Tapes (P) Ltd. Vs. CCE, Delhi
2007 (219) ELT 536 (Tribunal-Delhi)

(2) Hindustan Cables Ltd. Vs. CCE, Allahabad
2006 (198) ELT 527 (Tribunal-Delhi)

(3) Milton Plastic Industries Vs. CCE, Vadodara
2005 (188) ELT 206 (T-Mum.)

(4) U.P. State Sugar Corporation Ltd. Vs. CCE
2004 (168) ELT 280 (T-Delhi)

6. After hearing both the sides and on perusal of the records, it is seen from the Survey Report placed by the ld. Advocate that fire was occurred due to short circuit. The relevant portion of the Survey Report is reproduced below:-

> "9.2 STATEMENT OF MR. N. RAVI (SR OPERATOR-KNITTING M/C) AT M/s. CELESTIAL KNITS AND FABS., A-52, SECTOR-2, NOIDA
>
> ---
>
> According to him, he has been working with this company for last about 4 years and his duty was either in day shift or in night shift. On 29.4.2004, he came for night duty at 9 pm. And at that time production work in the knitting section on the ground floor was going on but the first floor and the second floor were closed by then.
>
> On 30.04.2004 at around 3 A.M., he was near the Knitting M/c when the security guard on duty came there and informed that there was a fire on first floor and smoke was coming from there. He then went to first floor with him, and noticed that the smoke was coming from the office section.

He then asked security guard to bring the keys of first floor and he went downstairs to bring the fire extinguishers and also informed other people about the fire. He came back to first floor (A-52) along with 3-4 staff members and along with fire extinguishers and on operating the door, they noticed the fire in the Office Reception area and whole place was full of smoke. They then immediately used fire extinguishers and tried to control the fire. It became difficult to stand there and so they came out. They went downstairs but the phones became all dead and not working since the EPBX was inside and it was on fire at the first floor.

He sent the security guard along with another person to the Fire Station and he himself went to a neighbouring factory and from there, he called up and informed Mr.Rajiv Bansal, and then came back to the factory."

It is further noted that the cause of fire could be due to electrical short circuit since the entire first floor was closed and locked. The fire station officer also had given report on the fire, which is relied upon by the Insurance Company.

7. I find that the findings of the Commissioner that the Appellant had not taken any steps to prevent them from fire is without any basis. The Tribunal in the case of U.P. State Sugar Corporation Ltd. (supra) held that

no accident can be attributed to anybody's carelessness. So, the finding of the Commissioner that accident accrued due to negligence of the party is not sustainable. Ld. Advocate submits that they have filed Insurance Claim excluding duty which is not disputed by the Commissioner in the impugned order. So, the impugned order is not sustainable. Accordingly, the order of the Commissioner is set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 12.08.08.

(P.K. Das)
Member (Judicial)

Ckp.