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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

Date 25/08/2008

Appeal No. C/648 /2007-SM[BR]

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

To :
M/S MODGIL FASHION EXPORTS
MODGIL HOUSE, GURU VIHAR, RAHON ROAD,
LUDHIANA.

Appellant

M/S MODGIL FASHION EXPORTS

Vs

Respondent

C.C. AMRITSAR

I am directed to transmit herewith a certified copy of **Final order No.**1178 / 2008 –SM [BR] dated 16.7.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C. AMRITSAR
   CUSTOM HOUSE, CENTRAL REVENUE BUILDING, THE MALL, AMRITSAR 143001.
2. Adv. / Consult
   MR.HARI OM ARORA,ADV
   B-XIX-810/A, CIVIL LINES, PRINCE HOSTEL LANDE, LUDHIANA.
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

Customs Appeal No.648 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.72/CUS/APPL/LDH/2007 dated 11.05.2007 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:16.07.2008

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 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? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

NT

M/s.Modgil Fashion Exports ...Appellants
[Rep. by Shri H.O. Arora, Advocate]

Vs.

CC, Amritsar ...Respondent
[Rep. by Shri B.S. Suhag, DR]

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

Final Order No.1178/2008 SM(BR)/Dated:16.07.2008

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

The relevant facts of the case, in brief, are that the Appellants filed Bill of Entry No.100909 dated 19.09.2002 for import of Circular Knitting

Machine and paid excess duty of Rs.1,27,411/-. The Appellants filed refund claim for the said duty, which was sanctioned by the Adjudicating Authority. Revenue filed appeal against the Adjudication Order before the Commissioner (Appeals). By the impugned order, the Commissioner (Appeals) set aside the Adjudication Order on the ground that the Appellant failed to prove that duty incidence has not been passed on to any other person.

2. Ld. Advocate on behalf of the Appellant submits that the Commissioner (Appeals) erroneously proceeded that the amount in question was shown as capital expenditure in their Books of Accounts. It is revealed from the Chartered Accountant's certificate dated 9.6.2008 that the said amount was debited to the imported machinery and after receipt of the refund amount from the Customs Authorities, the amount was credited to the imported machinery account as refund of excess duty paid by the firm, for the relevant period. He further submits that the Commissioner (Appeals) totally brushed aside the Chartered Accountant's certificate, which is not permissible in law. He relied upon the decision of the Tribunal in the case of Krishna International Vs. Commissioner of Customs (Import), Mumbai – 2008 (225) ELT 364 (Tribunal-Mumbai). He further submits that the Revenue failed to discharge the burden of proof that the duty incidence has been passed on to any other person.

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioners (Appeals). He submits that the excess duty was shown as capital expenditure in their P&L Account. He further submits that the Chartered Accountant's Certificate dated 9.6.2008 indicated the position of the accounts after receipt of refund claim, which is not relevant in the present case. He further submits that Chartered Accountant's certificate dated 6.7.2005 did not indicate how the amount was shown in the books of accounts.

4. After hearing both the sides and on perusal of the records, it is seen from the Chartered Accountant's certificate dated 6.7.2005 that it was certified that the incidence of excess amount of Rs.1,27,411/- has not been passed on to the consumer. There is no mention as to whether the said amount was shown in books of accounts. Further, the certificate dated 9.6.2008 certified that the excess duty paid was not included in the expenses. The said excess duty paid was debited to the imported machinery and after receipt of the refund from the customers, it was credited to imported machinery account as excess of refund duty amount was paid. On perusal of both the certificates, there is no indication that the said amount was shown in their books of accounts at the disputed period. Further, it was revealed from the Balance Sheet as on 31st March, 2006, the machinery imported during that period added value of Rs.45,37,863/-. Ld. Advocate submits that the said amount is capital investment and not capital expenses. On perusal of the records, I do not

find any material that the said amount was shown as capital goods investment. On the contrary, the Commissioner (Appeals) categorically stated that the excess duty paid as capital expenditure and it was shown as expenses. Therefore, in my view, the Appellant failed to prove that the incidence of duty has not been passed on to any other person. Accordingly, I do not find any reason to interfere the order of the Commissioner (Appeals). The appeal filed by the Appellant is rejected.

Order dictated & pronounced in open court on 16.7.2008.

(P.K. Das)
Member (Judicial)

Ckp.