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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/1186/2006 -SM[BR] Date 03/09/2008

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

To :
M/S SUPARSHWA INDUSTRIES
E-43, MAIN MANDIA ROAD, PALI (RAJ.)

M/S SUPARSHWA INDUSTRIES Appellant
Vs
THE COMMISSIONER OF CENTRAL EXCISE JAIPUR (RAJ) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1231 / 2008 -SM[BR] dated 8.8.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   THE COMMISSIONER OF CENTRAL EXCISE JAIPUR (RAJ)
   NCR BUILDING, C-SCHEME, STATUE CIRCLE, JAIPUR
2. Adv. / Consult
   MR. K.K.ANAND ADV.
   A-5 [BASEMENT] LAJPAT NAGAR NEW DELHI- 110024
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.1186 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.123 (HKS) CE/JPR-II/2006 dated 08.02.06 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:08.08.2008

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

NO

M/s. Suparshwa Industries ....Appellant
[Rep. by Ms. Asmita Nayak, Advocate]
Vs.

CCE, Jaipur ...Respondent
[Rep. by Shri Sansar Chand, DR]

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

Final Order No.1231/08-SM(BR)/Dated:08.08.2008

Per P.K. Das:

Heard both sides and perused the records.

2. The issue involved in this case is as to whether the cost of processing charges should be included in the value of grey fabrics in

process besides the value of grey fabrics for taking credit under Notification No.25/2003-CE (NT) dated 25.03.2003 and the demand of duty is hit by limitation. The Tribunal in the case of M/s. B.B. Shah (P) Ltd. and Another Vs. CCE, vide Final Order No.1655-56/07-SM (BR) dated 26.10.07 held that the cost of processing charges, fabrics in process would not be included in the value of grey fabrics while calculating the benefit of Modvat Credit in terms of the said Notification. It has also been held that the demand of duty cannot be held to be barred by limitation. But, penalty was set aside taking into account of peculiar facts of the case.

3. Ld. Advocate on behalf of the Appellant submits that they have not utilised the credit and demand of interest is not justified. She relied upon the decision of the Tribunal in the case of Lafarge India Pvt. Ltd. Vs. CCE, Rapur – Final Order No.103/08-SM (BR) dated 11.01.08.

4. In view of that, I respectfully agree with the decision of the Tribunal in the case of M/s. B.B. Shah (P) Ltd. (supra). Accordingly, the demand of duty is upheld and penalty is set aside. Regarding payment of interest, the Adjudicating Authority is directed to examine as to whether the Appellant utilized the Credit or not and to decide on the basis of the decision of the Tribunal. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 8.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.