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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/676 /2008- SM[BR] E / MISC /574 / 2008 Date 05/09/2008

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

To :
M/S H.P.COTTON TEXTILE MILLS LTD.
15TH KM STONE,
VILL MAYAR, DELHI ROAD,
HISAR (HARYANA)

M/S H.P.COTTON TEXTILE MILLS LTD. Appellant

Vs

C.C.E. ROHTAK Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1274 / 2008 –SM[BR]&M/236/ 2008 dated 6.8.2008

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. ROHTAK
   SCO NO,6 SECTOR 1, ROHTAK.
2. Adv. / Consult
   MR.R.PAL SINGH
   84, DARYAGANJ, 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
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 06.8.2008

E/Misc.Application No. 574/2008-SM(BR) in
Appeal No. 676/2008-SM(BR)

(Arising out of Order –in-Appeal No. 06/KKG/RTK/2008 dated 08.01.2008 passed by the Commissioner (Appeals) Central Excise, Delhi-III)

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?
3. Whether Their Lordships wish to see the fair copy of the Order?

No.

4. Whether Order is to be circulated to the Departmental authorities? Yes.

M/s H.P. Cotton Textile Mills Ltd. — Appellant/Applicant
(Rep. by Shri R.P. Singh, Advocate)

Vs.

C.C.E. Rohtak — Respondent
(Rep. by Shri R.K. Sinai, DR)

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

Misc order No. 236/08-SM(BR)

Final Order No. 1274/08-SM(BR)

Per: P.K. Das

The Applicant filed this application for modification of Stay Order No. 379/08-SM(BR) dated 05.6.2008, whereby the Applicant was directed to deposit of sum of Rs.3,00,000.00 and to report compliance on 06.8.2008.

2. After hearing both the sides, it is seen that the applicant filed application for remission of duty before the Commissioner of Central Excise, which was rejected by Order-in-Original No. 09/Excise/RTK/06 dated 31.01.06. Consequently, Additional Commissioner confirmed the demand of duty on the goods destroyed by fire as the remission application was rejected. Commissioner (Appeals) upheld a Adjudicating Authority. The applicant filed appeals separately against rejection of application of remission of duty passed by Commissioner of Central Excise and the Order passed Commissioner (Appeals) upheld demand of duty.

3. The Tribunal by Stay Order dated 05.6.08 against the Order of Commissioner (Appeals) in respect of demand of duty directed the applicant to deposit a sum of Rs. 3,00,000.00 and to report compliance on 06.8.2008. Subsequently, the Tribunal by Final Order No. 1093/08-SM(BR) dated 16.6.2008 set-aside the order rejection of application for remission of duty passed by the

Commissioner of Central Excise and remanded the matter to decide afresh. In the present application, the applicant requested to modify the Stay Order dated 05.6.08, in view of the subsequent Final Order dated 16.6.08 of the Tribunal. I find force in the submission of ld. Counsel. It is seen that Order of rejection of remission application for duty has been set-aside by Final Order dated 16.6.08. So, the demand of duty is not sustainable.

4. Accordingly the Stay Order dated 05.6.08 is modified in so far as pre-deposit of duty and penalty is waived. The appeal is taken up for hearing with the consent of parties.

5. As the Order of Commissioner of rejection of remission application was set-aside by Final Order dated 16.6.08, of the Tribunal and remanded back to Adjudicating Authority, in the present appeal, the impugned order of demand of duty is set-aside and the matter is remanded back to the Adjudicating Authority with direction to decide the matter after decision of the application for remission of duty by Commissioner of Central Excise. Thus, the appeal is allowed by way of remand.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta