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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/225 /2007 – SM[BR] Date 19/11/2008

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

To :
M/S SANTOSH KUMAR & SONS(HUF)

RANJIT SINGH PARK, STREET NO 0, KASHMIR
NAGAR, LUDHIANA.

M/S SANTOSH KUMAR & SONS(HUF) Appellant

Vs

C.C.E.LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1489 / 2008 - SM[BR] dated 1.9.2008

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.LUDHIANA

F BLOCK, RISHI NAGAR, LUCKNOW.
2. Adv. / Consult
MR.G.S.BHANGOO

631 (FF), SECTOR 11B, CHANDIGARH

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 - 3
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
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-1
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.2251 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.107/CE/Appl/LDH/06 dated 23.11.06 passed by the Commissioner of Central Excise (Appeals), Jalandhar]

Date of Hearing/ Decision:01.09.08

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?	:	No
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. Santosh Kumar & Sons ...Appellants
[Rep. by Shri Vikrant Kackria, Advocate]

Vs.

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

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

Final Order No.1489/08-SM (BR)/Dated:01.09.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of knitted fabrics classifiable under Chapter 60 of the Schedule to the Central Excise Tariff Act, 1985. On scrutiny of the records, it was detected that they received the knitted fabrics and blankets and availed Cenvat Credit. They undertook the process of stitching, labelling, packing and cleared the same on payment of duty. A show cause notice was issued proposing to deny the Credit on the said goods as the process undertaken by the Appellants does not amount to manufacture. The Adjudicating Authority disallowed the Credit of Rs.1,48,897/- and imposed penalty of equal amount under Rule 13 of the Cenvat Credit Rules, 2002 and Rule 25 of the Central Excise Rules, 2002. The Commissioner (Appeals) upheld the Adjudication Order.

2. The ld. Advocate on behalf of the Appellants submits that the Appellants undertook the certain process and cleared the goods on payment of duty, which is higher amount than the Credit availed by them. He relied upon the decisions of the Tribunal as under:-

(1) Sona Koyo Sterring Systems Ltd. Vs. CCE, Delhi
2007 (208) ELT 211 (Tribunal-Delhi)

(2) Commissioner o Central Excise Vs. Keetex
2008 (227) ELT 536 (Tribunal-Mumbai)

(3) Syndet India Vs. CCE, Navi Mumbai
2004 (166) ELT 349 (Tribunal-Mumbai)

3. Ld. DR reiterated the findings of the Commissioner (Appeals). He relied upon the single member decision in the Appellants' own case, on identical issue, the Tribunal vide Final Order No.848/07-SM (BR) dated 30.04.2007, upheld the disallowance of Credit and imposition of penalty.

4. After hearing both the sides and on perusal of the records, it is seen that in the Appellants' own case, the Tribunal, on the identical issue, vide Final Order No.30.4.2007, disallowed the Credit and upheld the imposition of penalty. The Order was passed ex parte and the decisions of the Tribunal placed by the Appellants were not before the Bench.

5. On perusal of the order of the Commissioner (Appeals), it is seen that the Appellants availed Credit on the knitted fabrics and blankets and, after certain process, cleared the same on payment of duty. It is contended by the ld.Advocate that they have paid the higher amount than the amount of Credit taken by them on the said inputs. The Commissioner (Appeals) observed that the registered dealers under the Central Excise Scheme are eligible to take Credit, in this situation. He also observed that the Appellants are the manufacturers of knitted fabrics and, therefore, they are not eligible for availing Credit under Rule 3 (4) of the Cenvat Credit Rules, 2004. The Division Bench of the Tribunal in the case of Sona Koyo Sterring Systems Ltd. Vs. CCE, Delhi reported in 2007 (208) ELT 211 (T-D) held that inputs not put to use in manufacture but cleared as such after repacking on payment of Central Excise Duty, reversal of Credit and penalties are not sustainable and the manufacturer is eligible to avail Credit in this situation. The Tribunal in the case of Keetex (supra), held that though the assessee is not entitled to Modvat Credit as they have neither undertaken any manufacturing activity nor they have any manufacturing premises but facts remain that they have paid duty on

final products in which inputs were used and quantum of duty paid on final products is not less than credit taken on inputs and the whole exercise is revenue neutral.

6. In view of the decision of the Tribunal, as stated above, I find that the denial of Credit is not justified. Accordingly, the denial of Credit and recovery of the said amount alongwith interest are set aside. I find that the Commissioner (Appeals) already reduced the penalty to Rs.10,000/- . I agree with the submission of the ld. DR that there is a contravention of the Rules, therefore, penalty is imposable. Accordingly, the penalty is upheld. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 1.09.08.

(P.K. Das)
Member (Judicial)

Ckp.