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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/1858/2006-SM[BR] Date 09/04/2008

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

To :
SWADESHI KOREATEX
VILL. VALLAH, VERKA BY-PASS ROAD, AMRITSAR

SWADESHI KOREATEX Appellant
Vs
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 595 /2008 –SM[BR] dated 26.2.2008 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. JALLANDHAR(HQ. AT CHANDIGARH)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
   CHANDIGARH.
2. Adv. / Consult
   MR.R.L.MEHRA & CO.
   M.M.MALVIYA ROAD, AMRITSAR
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Appeal No.1858 of 2006-SM (BR)

[Arising out of order in appeal No.38/CE/APPL/Jal./05 dated 29.1.2005 of the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:26.2.2008

For approval and signature:

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

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

M/s. Swadeshi Koreatex ...Appellants
[Rep. by Mr.R.L. Mehra, Consultant]

Vs.

CCE, Jalandhar Respondent
[Rep. by Ms. Archana Pandey Mittal, Jt. CDR, Authorized Representative (DR)]

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

Final Order No.595/08-SM(BR)/Dated:26.2.2008

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Per P.K. Das:

Heard both sides and perused the records.

2. The issue involved in this case is as to whether the credit of duty in respect of CVD paid through D.E.P.B. is admissible. The appellant contested the demand of duty mainly on limitation. The appellant availed the credit on the basis of bill of entry dated 27.11.97 wherein it was mentioned CVD paid through D.E.P.B.

3. Ld. Counsel submits that in the earlier case, the appellant availed credit on the strength of Bill of Entry dated 5.8.98 and demand of duty was raised vide show cause notice dated 10.7.2001. He submits that the Tribunal in their own case vide Final Order No.579 of 2007 dated 14.11.2007 set aside the impugned order. The relevant portion of the said order is reproduced below:-

> "4. We find that in this case, the appellant is challenging the order on the ground that the demand is time bar. The credit was taken on 3.1.98 and show cause notice was issued on 10.7.2001 alleging suppression on the ground that the appellant had suppressed the facts that the Customs Duty has been paid through DEPB Account.
>
> 5. We find from the copy of the bill of entry which was filed along with monthly return by the appellant and we find that there is declaration that the bill of entry filed under DEPB scheme and assessment was also made under DEPB scheme, therefore, suppression of fact with

> intent to evade duty cannot be alleged against the appellant. In these circumstances, we find the demand is time bar. Hence, demand and penalty is not sustainable. The impugned order is set aside and the appeal is allowed."

4. In view of the decision of the Division Bench of the Tribunal in the appellant's own case vide Final Order dated 14.11.2007, I set aside the impugned order as demand of duty is barred by limitation. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 26.2.08.

(P.K. Das)
Member (Judicial)

Ckp.