TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/958 /2006-959 /2006-SM[BR] Date 29/04/2008

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

To :
CCE,JALANDHAR
CR BUILDING PLOT NO-19,SECTOR-17C,CHANDIGARH.

CCE,JALANDHAR Appellant

Vs

M/S LUXMI PROCESSORS, Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 666 -667 /2008 –SM[BR] dated 16.4.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   1. M/S LUXMI PROCESSORS,
   2. M/S R.K. WOOLLEN MILLS
   BYE PASS ROAD,AMRITSAR AND R K WOOLLEN MILLS ,SULTANWIND ROAD,AMRITSAR.
2. Adv. / Consult
   MR.SUDHIR MALHOTRA
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 958-59 of 2006-SM

[Arising out of Order-in-Appeal No. 354-355/CE/JAL/ 2005 dated 26.12.2005 passed by Commissioner of Central Excise, Jalandhar]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President

---

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? :

Commissioner of Central Excise Jalandhar — Appellants

Vs.

M/s. Luxmi Processors
M/s. R.K. Woollen Mills — Respondents

Appearance: Mr. B.S. Suhag, DR for the Appellant
Mr. Sudhir Malhotra, Advocate for the Respondent

Date of decision : 16.4.2008

Final **ORDER NO. 666-667/08-SM(BR)**

Per Justice S.N. Jha:

These two appeals by the Revenue arising from a common adjudication order and order-in-appeal, were heard together and are disposed of by this common order.

2. On 7.10.98 the officials of Preventive Wing of the Central Excise Department visited the business premises of M/s. R.K. Woollen Mills (respondent in Appeal No. 959/2006) and conducted search. In the course of search 29 delivery challans in respect of 30131.50 mtrs. of processed cotton corduroy fabrics valued at Rs.14,36,805/- were recovered. The statement of proprietor, Khajinder Singh, was recorded who stated that he was dealing in trading of cotton corduroy cloth and used to receive cloth from different processors – mainly from M/s. Velvet Finishers and M/s. Luxmi Processors. On the basis of said recovery and statement, both M/s. Luxmi Processors, and M/s. R.K. Woollen Mills were booked. While the former (respondent in Appeal No. 958/06) was booked for clandestine removal of corduroy cloth measuring 30131.50 Mtrs, notice was issued to M/s. R.K. Woollen Mills (respondent in Appeal No. 959/06) for abetting clandestine removal of the goods.

3. On consideration of the replies of the respondents, the Assistant Commissioner of Central Excise as the adjudicating authority confirmed duty demand of Rs.2,87,361/- against M/s. Luxmi Processors and imposed various penalties under different provisions of the Central Excise Act and the Rules. He also imposed penalty of Rs.15000/- on M/s. R.K. Woollen

Mills for abetting clandestine removal of the goods by Luxmi Processors. On appeal by the respondents, the Commissioner (Appeals) set aside the adjudication order. The Revenue has come in appeal against the appellate order.

4. I heard Shri B.S. Suhag, DR for the Revenue and Shri Sudhir Malhotra, advocate for the respondents.

5. It would appear that the case is based on recovery of 29 delivery challans referred to above, but curiously, the attention of the proprietor, Khajinder Singh, was drawn to only one of them. Except the statement of Khajinder Singh, there is nothing on record to connect the receipt of goods from M/s. Luxmi Processors. No doubt, the statement of Khajinder Singh is inculpatory in nature and therefore, legally, there is no bar to placing reliance on it and drawing adverse inference against both M/s. Luxmi Processors and M/s. R.K. Woollen Mills . However, in the instant case, I am unable to place any reliance on the statement, for, despite request to that effect, the adjudicating authority declined to allow cross examination of Khajinder Singh, observing that request was made to delay the proceedings. The statement of Khajinder Singh undisputedly was recorded behind the back of any representative of M/s. Luxmi Processors. For the sake of record, it may be mentioned that besides Khajinder Singh, statement of Inderjeet Singh, said to be authorised representative of M/s. Luxmi Processors, was also recorded but after about one-and-a-half years on 24.2.00. There is no explanation as to why Inderjeet Singh was not examined earlier, if not on the day of visit or immediately after. The

statement inspires little confidence and no reliance can be placed on it either.

6. It was submitted on behalf of the respondents that the duty liability in respect of cloth is to be determined on the basis of square meter, whereas in the instant case, it was done on the basis of length. The respondent M/s. Luxmi Processors claims to be a job worker. In the facts and circumstances, it cannot be said that the goods in question had been received from M/s. Luxmi Processors. As Khajinder Singh in his statement had clearly stated that he used to get supplies from various sources; though mainly from M/s. Velvet Finishers and M/s. Luxmi Processor whether the goods in question had been received from M/s. Luxmi Processors or from some other source, is not borne out conclusively by the record. In the circumstances, I do not find any error in the order of the Commissioner (Appeals) requiring interference by this Tribunal.

The appeal is dismissed.

(Dictated in the open Court)

(Justice S.N. Jha)
President

ss