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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/206 /2006-SM[BR] Date 09/05/2008

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

To :
M/S A.R.LOOM TEX INDIA LTD
107,HSIDC,INDL ESTATE KUNDLI DISTT SONEPAT

M/S A.R.LOOM TEX INDIA LTD Appellant
Vs
C.C.E. ROHTAK Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 723 /2008 –SM[BR] dated 6.2.2008 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. ROHTAK
   SCO NO,6 SECTOR 1, ROHTAK.
2. Adv. / Consult
   MR.NAVEEN MULLICK
   B-388, MERA BAGH, NEW DELHI-63.
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, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeal No. 206 of 2006-SM (BR)

[Arising out of Order-in-Appeal No. 360/GRM/RTK/2005 dated 17.10.2005 passed by the Commissioner of Central Excise (Appeals), Gurgaon]

Date of Hearing/ Decision: 6.2.2008

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.	:	No
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 A.R. Loom Tex (India) Ltd., ...Appellants

[Rep. by Shri Naveen Mullick, Advocate]

Vs.

CCE, Delhi-IV Respondent

[Rep. by Ms. Archana Pandey, Jt. CDR]

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

Final Order No...723/08-SM(BR) Dated: 6.2.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Chenille Fabrics and unprocessed Woven Fabrics. On 27.8.2002, the Central Excise Officers visited the appellant's factory premises and seized 330 mtrs. Chenille fabrics and also detected that the appellant were manufacturing and clearing Chenille Fabrics without payment of duty. The said officers recorded the statement of the representative of the appellants. On 30.10.2002, the appellant informed that they have decided to pay the duty along with interest on the entire quantity manufactured by them upto 31.8.2002 and they paid the duty along with interest. A show cause notice dated 26.2.2003 was issued proposing the demand of duty and imposition of penalty and interest. The adjudicating authority confiscated the seized goods and an option was given to redeem the said goods on payment of fine of Rs. 50,000/-. He has also confirmed the demand of duty and appropriated the said amount as deposited by the appellant before issue of the show cause notice. No penalty was imposed on the appellants under Rule 25 of the Central Excise Rules as there was no malafide established. He has also allowed the benefit of deemed credit. Revenue filed an appeal before the Commissioner (Appeals), whereby adjudication order was modified in so far as deemed credit was disallowed and penalty of Rs. 2,70,558/- was imposed under Section 11AC of the Central Excise Act, 1944.

3. Learned Advocate on behalf of the appellant submits that the adjudicating authority rightly allowed the benefit of deemed credit and dropped the penalty as there was a bonafide mistake on the part of the appellant. He submits that the appellant was under impression that no duty is leviable on Chenille fabrics, which is supported by the decision of the Settlement Commission in the case of M/s Goldtex Furnishings Industries vide Final Order No. F-276/CE/05-SC (PB) dated 2.12.2004. He also relied upon the decision of the Hon'ble Supreme Court in the case of Padmini Products vs. CCE reported in 1989 (43) ELT 195 (SC).

4. Learned Jt. CDR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). She submits that the appellants mis-declared the goods in their invoices and, therefore, there is a suppression of facts with

intent to evade payment of duty. She relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana vs. Omkar Steel Tubes (P) Ltd., reported in 2008 (221) 200 (P&H).

5. After hearing both the sides and on perusal of the records, it is seen from the adjudication order that there was bonafide mistake on the part of the appellant. The adjudicating authority observed that the appellants' manufacturing unit had been issuing regular challans to their sister concern in Delhi, who in turn, was selling the goods on regular invoice. These records were being submitted to the other Government Departments also. So, the adjudicating authority observed that there was no suppression of fact or wilful evasion of duty is established against the appellants and they are entitled to benefit of deemed credit on the inputs used in the manufacture of Chenille Fabrics. The Commissioner (Appeals) disallowed the deemed credit on the ground that the appellants mis-declared the goods in the invoices with intent to evade payment of duty inasmuch as the goods were cleared in their brand name and they did not declare the correct description of the goods manufactured by them. In my view, the clearance of the goods in their brand name cannot be treated as mis-declaration. There is no dispute that the goods were cleared under proper challans and sold under the cover of the invoices, which are duly recorded in the registers. The main contention of the learned Advocate that during the relevant period, the trade was under impression that the un-processed Chenille Fabrics are not excisable goods. In support of his contention, he placed the decision of the Settlement Commission in the case of M/s Goldtex Furnishing Industries (supra). I find that the decision of the Settlement Commission is not applicable before this Tribunal but, has it a persuasive value. It is seen from the said order of the Settlement Commission that the applicant therein settled

the identical issue on payment of duty of Rs. 44,49,972/- and the said authority allowed the modvat /cenvat credit on the inputs and granted immunity from imposition of penalty. In the present case, it is seen that the Central Excise Officers visited the appellant's factory on 27.8.2002 and the appellant deposited the entire amount of duty with interest on 30.10.2002. The entire transaction was recorded in the records. The Hon'ble Supreme Court in the case of Padmini Products (supra) held that for mere failure or negligence of the manufacturer either not to take out a licence or not to pay duty in case where there was scope for doubt, does not attract the extended limitation. The learned Jt. CDR relied upon the decision of the Hon'ble High Court in the case of Omkar Steel Tubes (P) Ltd., (supra) wherein, it has been held that mere fact that duty has been deposited before issue of show cause notice would not result in non-application of Section 11AC of the Central Excise Act, 1944 and penalty could still be imposed as long as various elements envisaged by Section 11AC are satisfied indicating presence of mens-rea. In the present case, the adjudicating authority dropped the penalty after considering the conduct of the party in detail. Taking into account the overall facts and circumstances of the case and the case laws, I agree with the findings of the adjudicating authority that no suppression of fact with intent to evade payment of duty or wilful evasion of duty etc. are established. Accordingly, the impugned order of the Commissioner (Appeals) is set-aside and the adjudication order is restored. The appeal is allowed.

Order dictated & pronounced in open court on 6.2.2008.

(P.K. Das)
Member (Judicial)

Ckp.