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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. C/558 /2008 – SM[BR]   Date 20/03/2009

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

To :
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL REVENUE BUILDING,
THE MALL, AMRITSAR 143001.
C.C. (PREVENTIVE) AMRITSAR   Appellant
Vs
M/S VARDHMAN INDUSTRIES LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 229 / 2009 –SM[BR] dated 16.3.2009

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S VARDHMAN INDUSTRIES LTD.

G.T.ROAD, SAHNEWAL,LUDHIANA.

2. Adv. / Consult

NONE;-------------

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,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI.

Customs Appeal No. 558 of 2008
[Arising out of order-in-appeal No. 40/CUS/REV/LDH/2008 dated 17.4.2008 passed by Commissioner (Appeals) Customs and Central Excise, Jalandhar (Chandigarh)].

Date of Hearing/ Decision : 27.02.2009

CC (Prev.) Amritsar — Appellant

Versus

M/s Vardhman Industries Limited — Respondent

Appeared for Appellant - Mr. R.K. Saini, DR
Appeared for Respondent - None

CORAM: Hon'ble Mr. D.N. Panda, Judicial Member

Final Order No. 229/09-SM (BR)

Per D.N. Panda

None present for the respondent. The matter was first before the Bench for hearing on 20.02.2009. None being present on that day, that was adjourned to 27.02.2000. Notice was issued to the appellant on 22.01.2009 to grant an opportunity of hearing on 20.02.2009. But the appellant having failed to appear on that day, the matter was again adjourned to 27.2.2009. Today, no one is present on behalf of the respondent.

2. Learned DR submits that the learned Commissioner erred in deciding the matter in favour of the Respondent for the grounds mentioned in page 10 and 11 of the appeal memo. Those grounds are as under:-

> "i) The Commissioner (Appeals) has erred in setting aside appeal of the department as the adjudicating authority allowing credit to the respondent under Target Plus Scheme is not implementing authority and Director General of Foreign Trade (DGFT) is the only implementing authority in the case of Target Plus Scheme.

Para 2.4 of the Foreign Trade Policy 2004-2009 (Vol-I) (Year 2006-07) (referred to as the FTP] as under.

"2.4 Procedure

The Director General of Foreign Trade may, in any case or class of cases, specify the procedure to be followed by an exporter or respondent or by any licensing or any other competent authority for the purpose of implementing the provisions of Act, the Rules and the orders made there under and this policy......"

It is evident from the above that the implementing authority under the foreign Trade policy is DGFT. The adjudicating authority has no locus-standi to allow credit in the Target Plus Scheme.

ii) To take the credit under Target Plus Scheme the respondent should have approached the DGFT. The Adjudicating Authority has erred in allowing the credit to the respondent.

iii) The Target Plus Scheme basically provides exemption to imports or production of Target Plus Scheme Certificate to the Customs Authorities. The Central Government under power conferred upon it under Section 25 of the Act has issued various exemptions relating to Target Plus Scheme e.g. Notification No. 33/2005-CUS dated 8.4.2005 and 73/2006-Cus dated 10.7.2006 as amended. These Notifications provide for exemption from payment of Customs Duties subject to fulfillment of certain conditions. Thus import cleared against this notification is exempted from duties of customs (subject to debiting equal amount from the target plus certificate). Since import is cleared under exemption, hence, there is no question of refund. The refund can be granted only of the duty paid. Since in the instant case no duty. As the goods were cleared under exemption notification, was paid. Therefore, the respondent was not entitled to any refund.

iv) The Adjudicating Authority has erred in allowing the refund assuming the powers not conferred upon under the FTP, which was contrary to law.

v) Keeping in view the facts of the case the adjudicating authority should not have allowed the refund to the respondent".

3. He reiterates the grounds and submits that DGFT is the appropriate authority to consider the claim if any that arises in respect of the transaction involved in the present case. Therefore, learned DR suggests that the matter may be sent back to the learned Commissioner (Appeals) for reconsideration of the issue since respondent is absent today.

4. Heard Revenue. In view of fair suggestion of learned DR that the respondent should get an opportunity to raise defence if any, against the grounds of Revenue, the matter should go back to the learned Commissioner (Appeals) to re-examine the issue following due process of justice. While deciding the matter, giving due regard to the Revenue's stand as stated by the learned DR, that deserves consideration, the matter may be decided. In the result, appeal of the Revenue is remanded in the manner indicated above.

[Dictated and pronounced in the open Court]

[D.N. Panda]
Judicial Member

[Pant]