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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/849 /2006 – SM[BR] Date 08/04/2009

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

To :
CCE,AMRITSAR

C.R.BUILDING PLOT NO-19,SECTOR-17C,CHANDIGARH
CCE,AMRITSAR Appellant

Vs

M/S HINDUSTAN EMBROIDERY MILLS.AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 301 / 2009 –SM[BR] dated 31.3.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**
1. Respondent

M/S HINDUSTAN EMBROIDERY MILLS.AMRITSAR

G.T.ROAD,CHHEHARTS,AMRITSAR.

2. Adv. / Consult SHRI K.K. ANAND ADV.
A-5,[BASMENT] LAJPAT NAGAR-III,
NEW DELHI -110024

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
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Assistant Registrar
(SM Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.849/2006-SM(Br)

(Arising out of order in appeal No.1/CE/Appl/Jal/05 dated 6.1.06 passed by the Commissioner of Central Excise & Customs (Appeals), Jalandhar)

CCE, Amritsar — Appellant

Vs

M/s Hindustan Embroidery Mills — Respondent

Appeared for Appellant : Shri Sansar Chand, DR
Appeared for Respondent : Ms. Asmita Nayak, Advocate

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

Date of Hearing: 19.3.2009

Final Order No. 301 /2009-SM (BR)

**Per D.N. Panda**:

The learned DR submits that the respondent was allowed to operate on Compounding Levy Scheme in respect of Seven Embroidery machines in two shifts. But the respondent violated the terms of such Scheme and operated for more than two shifts. The documents recovered from the security officer of the respondent from their factory premises established that there was manufacturing activity carried out in the mid night in violation of the order passed under the above Scheme. It was established without any doubt that the Respondent was operating for more than two shifts and also on more machines. Therefore, the learned Adjudicating authority rightly passed the order levying the duty, while the Appellate Authority below granted relief to the Appellant. He specifically drew my attention to page 44 of the appeal folder which contains para 4.5 of the order of adjudication (page 11). He relied on the recorded fact that there was categorical admission by Shri Vikram Singh Uppal, Director of the Respondent firm and submitted that machines might have been run by labourers and employees violating the compounding levy scheme.

2. Learned Counsel Ms. Asmita Nayak submits that the note book recovered in the course of investigation does not establish the allegation. There was nothing clandestine removal of the goods found by the authorities. There was no evidence that third shift was running after 2 AM. The authorities, only on surmise made the adjudication against the respondent. All along respondent operated in two shifts and within the purview of order of Compounding. A reasoned and speaking order having been passed by the learned Appellate Authority, that does not call for interference.

3. Heard both the sides and perused the record.

4. The adjudicating authority has clearly pointed out in para 1.11 at page 3 of the order of adjudication that the compounding levy scheme was allowed in the case of respondent for two shifts. First shift was from 8 AM to 5 PM and second shift was from 5 PM to 2 AM. There is nothing in order of adjudication to show that seven number of embroidery machines have been used for manufacture

beyond 2 AM nor also machines beyond seven numbers were used any time. Revenue has although made a good effort to establish from the security officer, showing various types of goods kept, there is nothing on record to establish that anything beyond the installed capacity was manufactured operating the machine over and above two shifts. The compounding levy scheme has been based on an assessment of given situation and capacity. In this case, the levy was subject matter on shift basis and that too respondent having 7 machines. The post investigation was not witnessed by any demonstration beyond 2 AM to establish that the machines were used beyond 2 AM. Had there been one occasion noticed, Revenue would have been benefited. Nothing being on record to show that there was any activity carried out using more than 7 machines in any of the shifts, in absence of any cogent reason to establish the charges levelled, the Respondent gets benefit of doubt. No doubt learned DR has made sincere effort to submit that the Director Shri Vikram Singh Uppal stated in the recorded statement that labourers and employees have operated the machines during night shift. But such a contention is not getting support from adjudication order showing that the shifts were operated beyond 2 AM. Therefore, pleadings of Revenue fails to find any favour in the course of appeal hearing.

5. In view of aforesaid observations and considering the scheme of compounding levy and in absence of any cogent reason, there is no scope to disturb the order passed by the

Commissioner (Appeals). Accordingly, Revenue's appeal is dismissed.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*