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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/383 /2007 – SM AND E/ 1575/2008 –SM[BR]

Date 22/04/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S VASANT SPINNERS
2. M/S VASANT SPINNERS
48, BANARASI DASS ESTATE MALL ROAD, NEAR
TIMARPUR, DELHI
110054

M/S VASANT SPINNERS

Appellant

Vs

C.C.E. GHAZIABAD

Respondent

I am directed to transmit herewith a certified copy of **Final order No 329 – 330 / 2009 –SM[BR]**. dated 26.3.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

C.C.E. GHAZIABAD

CGO COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD
201002

2. Adv. / Consult
MR.J.P.KAUSHIK

A-14/3, SFS FLATS, SAKET, NEW DELHI-110017

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

EXCISE APPEAL NO. 383 OF 2007-SM AND E/1575 OF 2008

[Arising out of Order-in-Original No. 01/Tech/Commr/GBD/06 dated 27.11.2006 & 102/CE/GBD/08 dated 29.4.2008 both passed by the Commissioner of Central Excise, Ghaziabad]

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?	No
2.	Whether it would 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?	Yes

M/s. Vasant Spinners — Appellant

Vs.

CCE, Ghaziabad — Respondent

Appearance:

Shri J.P. Kaushik, Advocate for the Appellants;
Shri Sansar Chand, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 26th March, 2009

FINAL ORDER NO. 329-330/09-SM(BR) **dated** 26.3.09

Per P.K. Das:

Common issue is involved in both these appeals and, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Cotton Yarn. On 12.3.98 fire broke out in the appellants' factory and damaged finished goods. On 12.3.98 was Thursday and next day was holiday being Holi festival and thereafter it were Saturday and Sunday. Therefore, on 16.3.98 the appellant's informed the Asst. Commissioner of Central Excise regarding fire. They also informed over telephone on 12.3.98 itself to the Range Suptd. On 20.3.98 the Range Officer visited the appellants' factory and verified the stock. The Range Suptd. assessed shortage of 17,467.920 kgs. of Cotton Yarn. Show cause notice dated 20th July, 98 was issued proposing demand of duty of Rs. 63,006/- and penalty on the ground that the appellants had not submitted any application for remission of duty on the quantity of 17,467.920 kgs. of Cotton Yarn destroyed in fire. The appellants filed remission application on 13.8.98. The Asst. Commissioner of Central Excise vide Order-in-Original No 27.11.2006

confirmed the demand of duty which was upheld by the Commissioner (Appeals) against which appeal No. 1575/08 was filed. In the meantime, by Order-in-Original dated 27.11.2006 the Commissioner of Central Excise rejected the remission application against which the appellants filed appeal No. E/383/07.

3. Learned Advocate on behalf of the appellants submits that the Commissioner of Central Excise rejected the application on the ground that intimation was not given within 48 hours. He submits that 12.3.98 was Thursday and therefore intimation was given on next working day 16.3.98. He further submits that the Range officer verified the stock on 20.3.98. He drew attention of the Bench to the verification report dated 20.3.98. He also submits that the insurance company by letter dated 27.12.98 informed that the claim amount was not inclusive of any Central Excise duty.

4. Learned D.R. reiterates the findings of the Commissioner. He submits that intimation within 24 hrs. is statutory requirement which was not followed by the appellants. He further submits that the appellants had not quantified the shortage/damage during fire on 12.3.98. He also submits that the learned Advocate relied upon the stock taking report which has no connection with the fire accident report.

5. After hearing both sides and on perusal of the record, I find that on 17.3.98 the Range Suptd. was informed about the fire accident but on

perusal of the letter dated 12.3.98 addressed to the Asst. Commissioner of Central Excise it appears that on 16.3.98 the appellants intimated the fire accident to the Asst. Commissioner which is next working day. It is revealed from the stock verification report dated 20.3.98 that there was a shortage of 17467.920 kgs. of Cotton Yarn. In the show cause notice dated 21st July, 98 the Asst. Commissioner of Central Excise accepted that the said quantity was destroyed in fire but no remission application was filed. It is also seen that the insurance company certified that the claim amount was not inclusive of central excise duty. Therefore, the reasons for rejection of remission application, given by the Commissioner, are not sustainable.

6. In view of the above discussion, Order dated 27.11.2006 passed by the Commissioner rejecting the remission application is set aside. Consequential demand of duty is also set aside. Accordingly, both the appeals filed by the appellants are allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK