

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/4228/2004 - EX[DB]

Date 23/06/2009

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

To :
M/S WINSOME YARNS LTD. (100% EOU)
VILL. KURANWALA, DERABASSI (PUNJAB)
M/S WINSOME YARNS LTD. (100% EOU)

Appellant

Vs
Respondent

C.C.E. CHANDIGARH

EX[DB] dated 16-6-09

I am directed to transmit herewith a certified copy of Final order No. 418/2009-
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. CHANDIGARH

PLOT NO 19, SEC 17-C, CHANDIGARH

2. A dv. / Consult *SH. RUPENDER SINGH, ADV.,*
3015, SECTOR-27-D, CHANDIGARH

3 C.D.R

~~4 J.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise. I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)

11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

12 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

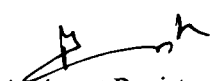
13 Taxmann Allied Service Pvt Ltd., 21/35, West Puniabi Bagh, New Delhi - 110026

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

16 Office Copy

17 Guard file


Assistant Registrar
(Excise Appeal Branch)

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

COURT – III

CENTRAL EXCISE APPEAL NO. 4228 OF 2004-EX

[Arising out of Order-in-Appeal No. 442/CE/CHD/2004 dated 17.06.2004 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
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?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Winsome Yarns Ltd.

Appellant

Vs.

CCE, Chandigarh

Respondent

Appearance:

Shri Rupender Singh, Advocate for the appellants;
Shri K.P. Singh, D.R. for the Revenue

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

Date of hearing/decision: 16th June, 2009

Final ORAL ORDER NO. 418/2009-Ex dated _____

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner No. 442/CE/CHD/2004 dated 17.6.2004.

2. Heard both sides.

3. The appellant is a 100% E.O.U. and manufacture yarn and clear them mainly for export and the quantity permitted by the Development Commissioner into DTA. In respect of permitted quantity, it is claimed that the appellant supplied the same as inputs to manufacturer of excisable goods who ultimately exported the said product. For this purpose, it is claimed that they produced CT-2 certificate issued in favour of the recipient unit by the officer of the in-charge of the recipient unit. On the basis of the said certificate it was claimed that they have effected the clearances duty free in terms of Rule 19(2) of the Central Excise Rules, 2002 read with the notification No. 43/2001-CE (NT) dated 26.6.2001. The original authority held that as a 100% E.O.U. they are governed by special provisions and, therefore, they cannot avail the benefit under Rule 19(2) of the Central Excise Rules and the said order has been upheld by the Commissioner (Appeals).

4. Learned Advocate submits that as a 100% E.O.U., clearances effected by them to DTA were within the permissible limit as per EXIM

Policy. Rule 19 does not exclude 100% E.O.U. from its purview. He also relies on the decisions of the Tribunal in the case of Kurt-O-John Shoe Components (I) Ltd. vs. Commr. of C.Ex & Cus., Noida, reported in 2003 (154) ELT 651 (Tri.-Del.) and in the case of Paras Fab International vs. CCE, Jaipur, reported in 2003 (153) ELT 549 (Tri.-Del.) which held that Rule 13 of Central Excise Rules, 1944 was applicable in respect of clearances made from 100% E.O.U. He also relies on the decision of the Tribunal in the case of CCE, Madurai vs. Renuga Soft-X Towels, reported in 2007 (217) ELT 589 (Tri.-Chennai) wherein it has been held that Rule 19 of Central Excise Rules, 2002 and the notification No. 43/2001-CE(NT) are *pari materia* to Rule 13 of erstwhile Rules, 1944 and Notification No. 47/2001-CE(NT) issued under Rule 13.

5. Learned SDR reiterates the findings of the Commissioner (Appeals).

6. We have carefully considered the submissions from both sides. There is no dispute before us that the clearances made by the appellants is beyond the limit prescribed by the Development Commissioner. In respect of such clearances duty shall be payable, if they are made to general category of buyers. In the present case, the appellant have chosen to supply to special category of buyers covered under Rule 19(2) of the Central Excise Rules, 2002. We agree with the submission of the learned Advocate that Rule 19 does not exclude the clearances from 100% E.O.U. from its purview. The decisions of the Tribunal in the case

of Kurt-O-John Shoe Components (I) Ltd. and Paras Fab Internatioanl
(supra) support the contention of the learned Advocate.

7. In the light of the above, we set aside the order of the lower
authorities and allow the appeal with consequential relief.

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK