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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/ 1704 / 2007 -SM[BR] Date 08/06/2009

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

To :
SHANKESHWAR FABRICS PVT LTD
F-361-362, MANDIA ROAD, PALI(RAJASTHAN)

SHANKESHWAR FABRICS PVT LTD Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 548 / 2009 -SM[BR] dated 1.6.2009 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. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   SHRI K.K.ANAND ADV.
   A-5, BASMENT LAJPAT NAGAR-III NEW DELHI
3. S.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 Publictions 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 Punjabi 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 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

In Excise Appeal No.1704 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.156-159(HKS)CE/JPR-II/2007 dated 13.03.2007 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:1.6.2009

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.		
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
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.Shankeshwar Fabrics Pvt. Ltd. ...Appellants
[Rep. by Shri Hemant Bajaj, Advocate]

Vs.

CCE, Jaipur-II ...Respondent
[Rep. by Shri S.K. Bhaskar, DR]

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

Final Order No. 548/09-SM(BR)/Dated:01.06.2009

Per P.K. Das:

Heard both sides and perused the records.

2. The issue involved in this case is as to whether the value of under-processed grey fabrics lying in stock as on 31.03.2003 for the purpose of

determination of one time deemed credit in terms of Notification No35/2003-CE(NT) dated 10.04.2003 as amended should include the processing charges besides the value/cost of inputs contained therein. The Original Authority disallowed the credit of Rs.1,27,785/- and refrained from imposing any penalty and payment of interest. Revenue filed appeal before the Commissioner (Appeals) for imposition of penalty. By the impugned order, the Commissioner (Appeals) imposed penalty equal to the amount of duty. Hence the appellant filed this appeal.

3. After hearing both the sides, I find that the issue has already been decided by the Tribunal in the case of M/s. B.B. Shah Pvt. Ltd. and Another Vs. CCE, Jaipur vide Final Order Nod.1655-1656 of 2007/SM (BR) dated 26.10.2007, whereby inadmissibility of credit was upheld and penalty was set aside. In the present case, the appellants are not contesting the inadmissibility of credit. It is seen from the order of the Original Authority that the appellants have not utilised the credit. Ld. Advocate submits that they have not utilised the credit and, therefore, penalty is not warranted. I find that the Tribunal in the case of B.B. Shah Pvt. Ltd. and Another (supra) set aside the penalty. In view of that, imposition of penalty is set aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 1.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.