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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/44 /2009 – SM[BR] Date 04/09/2009

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

To :
M/S BHAWANA SPINNING MILLS ,
BXXXI, 2253/3H, NEAR MR DEYING, GEETA
COLONY, TAJPUR ROAD, LUDHIANA.

M/S BHAWANA SPINNING MILLS , Appellant

Vs

C.C. (PREVENTIVE) AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1121 / 2009 –SM[BR] dated 26.8.2009 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
   C.C. (PREVENTIVE) AMRITSAR
   CUSTOM HOUSE, CENTRAL REVENUE BUILDING, THE MALL, AMRITSAR 143001.
2. Adv. / Consult
   MR.SAURABH KAPOOR, ADVOCATE
   11-YADVINDRA COLONY, THE MALL, PATIALA 147001

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)
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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

## CUSTOMS APPEAL NO. 44 OF 2009-SM

[Arising out of Order-in-Appeal No. 93/REV/CUS/LDH/08 dated 30.07.2008 passed by the Commissioner of Customs (Appeals), Chandigarh]

**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? | |
| 2. | Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | NA |
| 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. Bhawana Spinning Mills — Appellants

Vs.

C.C., Amritsar — Respondent

**Appearance:**

Shri Saurabh Kapoor, Advocate for the assessee;
Shri S.K. Bhaskar, SDR for the Revenue

**Coram:**

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

**Date of hearing/decision: 26th August, 2009**

**FINAL ORDER NO.** 1121 / 2009 SM (BR) **dated**

## Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants imported 18 sets of new "Flat Bed Knitting Machine/ Crochet Yarn Machine" vide Bill of Entry No. 113754 dated 22nd May, 2007. They declared the value as U.S.$ 3000 per set. The Assessing Officer enhanced the value as U.S. $ 4500 per set. The appellants paid the duty under protest. The Commissioner (Appeals) vide order dated 28.9.2007 allowed the appeal filed by the appellants. Hence, the appellants filed refund application for excess payment of duty of Rs. 2,36, 916/-. The original authority sanctioned the refund claim. Revenue filed appeal before the Commissioner (Appeals) whereby adjudication order was set aside. Hence, the appellants filed this appeal.

2. Learned Advocate on behalf of the appellants submits that the appellants filed Chartered Accountant certificate which was not considered by the Commissioner (Appeals) in proper manner. He also submits that the original authority sanctioned the refund claim as consequential relief of the order of the Commissioner (Appeals). It is his contention that the Revenue has not issued any show cause notice under Section 28 of the Customs Act for erroneous refund of duty and, therefore, appeal filed by the Revenue before the Commissioner (Appeals) is not maintainable. In this regard, he relied upon the decision

of the Tribunal in the case of Rajarathnam Matches (P) Ltd. vs. C.C., Tuticorin, reported in 2009 (240) ELT 442 (Tri. – Chennai). He fairly submits that this issue was not raised before the Commissioner (Appeals).

3. Learned D.R. on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the original authority referred the Chartered Accountant certificate. But the appellants placed other Chartered Accountant certificate before the Tribunal which cannot be relied upon. He also submits that the accounts submitted by the appellants are not signed by any person.

4. After hearing both sides and on perusal of the records, I find that the Commissioner (Appeals) observed that certificate from Chartered Accountant is without furnishing any proof of the same. But the Chartered Accountant certificate dated 3.1.2008 filed by the appellants in their memorandum of appeal states that as per books of accounts an amount of total duty paid of Rs. 3,90,986/-, an amount of duty Rs. 2,72,505/- only has been taken in purchase head and an amount of Rs. 1,18,480/- is being claimed as refund has been shown receivable from Customs. Learned Advocate also drew the attention of the Bench to another Chartered Accountant certificate dated 3.1.2008 in the same line in respect of other consignment. It is seen that the certificates of the Chartered Accountant are supported by the statement of accounts duly certified by the Chartered Accountant. I find that the Commissioner

(Appeals) passed the order without going through the certificates of Chartered Accountant. It is also seen that the point raised by the learned Advocate that for recovery of erroneous refund show cause notice should be issued under Section 28 of the Act was not taken before the Commissioner (Appeals). In my view, it will be fit and proper, if the matter is decided afresh by the Commissioner (Appeals).

5. In view of the above discussion, I set aside the order of the Commissioner (Appeals). The matter is remanded back to the Commissioner (Appeals) to decide afresh after considering the submission and evidences submitted by the appellants. Appeal is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK