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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/2423/2007 – SM[BR] Date 09/10/2009

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR II — Appellant

Vs

M/S GADIYA TEXTILE MILLS — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1210 / 2009 –SM[BR] dated 15.9.2009 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 GADIYA TEXTILE MILLS
   INDUSTRIAL AREA, MANDIA ROAD, PALI (RAJASTHAN)
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ 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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 15.9.2009

Central Excise Appeal No.2423 of 2007 -SM

Arising out of the out of the order in appeal No.366 (HKS)CE/JPR-II/2007 dated 12.6.2007 passed by the Commissioner (Appeals II), Customs & Central Excise , Jaipur.

C.C.E., Jaipur II .... Appellant

Vs.

M/s Gadiya Textile Mills .... Respondent

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of 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

Appearance:

Shri S. Gautam, Authorized Departmental Representative (SDR) for the Revenue and Shri Atul Gupta, Company Secretary for the respondent

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1210\2009 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) dated 12.6.2007 by which the order of the original authority demanding duty of Rs.76,0624/- along with interest and imposing penalty of equal amount was set aside.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

a) The respondents have sent printed/processed fabrics to one M/s Shree Rohit Syn. Fab. (P) Ltd. for undertaking the processes of heat setting and finishing and received back , the consignment under challans dated 25.8.01, 25.8.01, 30.8.01,and 9.9.01. The show cause notice alleged that the printed fabrics cleared by the respondent was not subject to duty at the time of clearance of the printed fabrics by the respondent ; after processing, the job worker has not paid the excise duty; even after receipt of the processed fabrics, the respondent has not paid excise duty. The original authority confirmed the demand and imposed penalty as mentioned above.

b) The Commissioner (Appeals) vide his order dated 25.7.06 set aside the order of the original authority and remanded to the original authority with the following observations and directions:

> ***" The appellants have vehemently pleaded that they do not posses the facility of processing of fabrics with the aid of the power or steam and hence they are exempt from levy of excise duty. These facts were stated to be narrated by the proprietor in his statement. I find that there is no finding of the Adjudicating authority on this aspect. However, the claims of the appellants have to be examined . Therefore, in the interest of justice it would be appropriate to remand the case to the Adjudicating authority."***

c) The original authority in de novo proceedings vide his order dated 30.1.2007 confirmed the demand of duty.

d) The Commissioner (Appeals), vide his impugned order dated 12.6.2007, has set aside the order of the original authority with the following findings:

> ***"12. I find that the adjudicating authority at para 28 of the impugned order in his findings mentioned as 'from the statement of Shri N.C. Gadiya on 6.4.2002 it is proved that the appellants have cleared the processed fabrics to M/s Shree Rohit Syn Fab. (P) Ltd., Pali. In this regard on going through the said statement I find that Shri Gadiya proprietor of the appellants firm no where stated that they processed the fabrics with the aid of power or steam.***
>
> ***13. Further, the adjudicating authority has also held that 'there is no force in the contention of the assessee that they do not have the facility to process the fabrics. In case, they do not have the facility to process the fabrics how they cleared the processed man-made farbric to M/s Rohit Fab'. Thus it is clear that the adjudicating authority has simply decided the case without going through the main issue, ie. Whether the appellants had used power/steam in the processing of fabrics or not.***

14. I also find that in the show cause notice dt. 4.7.05, issued to the appellants, it was alleged that appellants clandestinely removed processed man-made fabrics. The department has nowhere established that the process carried out by the appellants was with the aid of power or steam. Also at the time of passing the impugned order, it was not mentioned that the process carried out by the appellants does not amount to manufacture and why the demand was raised only for 3400 metre and not for the other quantity lying in stock as on the date of visit of departmental officers to their factory.

15. From the above, it is clear that the department case is only on the basis of assumption/presumption. In spite of clear directions given in the remand order the adjudicating authority has not followed the same but passed the impugned order on the assumptions/ presumptions. It is settled principle of law that no demand can be confirmed/recovered only on the basis of assumption/presumption".

4. The learned SDR submits that the printed processed fabrics have been cleared by the respondent without payment of duty. In the statement given during investigation, they have not claimed that the goods were hand-processed i.e. not processed with the aid of power or steam. The respondent who is claiming the exemption for the goods as not processed with the help of steam or power has to discharge the burden of proof in support of such claim. Therefore, he submits that the order of the Commissioner (Appeals) is not legal and proper. He also reiterates the grounds of appeal mentioned in the appeal memorandum. He seeks restoration of the order of the original authority.

5. The learned Company Secretary submits that in the statement given during investigation, no where the respondent or the job worker has submitted that the goods sent by the respondents to the job worker were processed with the aid of power or steam; the process of printing can be undertaken with out the aid of power or steam. Subsequently, the processing has been done by the job worker. If duty was payable consequent to processing by the job worker, the same should be demanded only from the job worker and not from the respondent. He also draws my attention to the submission before the original authority to the effect that printing was only

by hand-processing and no power or steam was used in the process of printing. He also draws my attention to photos of the table and the job worker engaged in such processing which were also enclosed along with reply. The original authority has noted the submission. The Commissioner (Appeals) has held that the original authority's decision was based on assumptions and presumptions. He submits that the assumptions by the original authority have been made overlooking the defence submissions made before the original authority.

7. I have carefully considered the submissions from both sides and perused record. It is not disputed that the order dated 25.7.06 by the Commissioner (Appeals) has not been appealed against by the Department. The direction of the Commissioner (Appeals) was to examine the claim of the party that they did not posses the facility of processing of fabrics with the aid of power or steam. This has not been undertaken by the adjudicating authority . His finding that the party did not state during investigation that they processed the fabrics without the aid of power or steam was not compliance of the directions of the Commissioner (Appeals) to examine the claim of the party that they did not posses the facility of processing of fabrics with the aid of power or steam. The Commissioner (Appeals) has also held that the duty demand has been raised only in respect of 3400 meters of fabrics received from the job worker and not for other quantities lying in stock in the premises of respondent on the date of visit of the departmental officers. The party has taken several submissions regarding minimal use of power i.e. absence of " the power proportionate use of machinery" and non-existence of machinery which required use of power and all these submissions have not been dealt with by the original authority in spite of opportunity having been given by remand order dated 25.7.06. In view of the above, I hold that no valid grounds have been adduced to interfere with the finding and reasoning adopted by the Commissioner (Appeals) in allowing

the appeal of the party.

8. The appeal by the Department is, therefore, rejected.

(M. Veeraiyan)
Member (Technical)

scd/