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

Date 28/01/2009

Appeal No. C/91 /2006-93 /2006 - CU[DB]

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

To :
M/S SURETEX INDIA LTD.
172-MODEL TOWN PANIPAT (HARYANA) — Appellant
Vs
M/S SURETEX INDIA LTD. — Respondent

COMMISSIONER, CENTRAL EXCISE
COMMISSIONERATE, ROHT

I am directed to transmit herewith a certified copy of **Final order No.** C/27-29/09-CUS. DATED 22.01.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   COMMISSIONER, CENTRAL EXCISE COMMISSIONERATE,
   P--17 SECTOR-1 ROHTAK (HARYANA)
2. Adv. / Consult
   MR. J M SHARMA, CONSLT.
   G-31, BASANT ENCLAVE, NEW DELHI

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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

17. SURENDER PAL SINGH DIRECTOR,
18. RAVINDER PAL SINGH DIRECTOR
    M/S SURETEX INDIA LTD.
    172-MODEL TOWN PANIPAT

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal Nos. 91-93 of 2006

[Arising out of Order-in-Original No. 31/Commr/RP/2005 dated 29.11.2005 passed by Commissioner of Central Excise, Rohtak.]

For approval and signature:

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

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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 should 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

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M/s. Suretex India Ltd. Appellants
Shri Ravindar Pal Singh
Shri Surendar Pal Singh

Vs.

Commissioner of Central Excise Respondent
Rohtak

Appearance:

Mr. J.M. Sharma, Consultant with Shri Roop Singh, Advocate for the Appellants
Mr. S.K. Panda, Jt.CDR for the Respondent

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

Date of Hearing /Decision: 22.1.2009

Final **ORDER NO. C/27-29/09**

Per M. Veeraiyan (for the Bench):

1. These three appeals arise out of same Order-in-Original and, therefore, are being dealt with by a common order.

2. Heard both sides.

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

a) The appellant company was given a letter of approval in 1994 as a 100% EOU for manufacture of jacquard cloth and home furnishings. In this connection, they have imported duty free capital goods valued Rs.6,24,94,390/- involving duty of Rs.2,38,11,849/- and imported duty free raw materials valued at Rs.12.17 lakhs involving duty amount of Rs.12,83,539/-.

b) The appellants claim that they commenced the commercial production on 1.4.98 and intimated the same to the Development Commissioner. The appellant also claims that they have exported the goods worth Rs.63.8 lakh. In support of this claim relied on a show cause notice dated 23.5.02 issued by the Development Commissioner. In addition, he relies on two export realisation certificates one for a sum of Rs.2,74,321/- in an export of Home Furnishing cloth and another for a sum of Rs.61,989/- relating to export of 100% silk fabrics. The appellants claim that the capital goods have been put into use for manufacture of goods and raw materials imported have been used for manufacture of finished goods and that they have been exported.

c) Commissioner after personal hearing is over, has taken a report from the jurisdictional Assistant Commissioner, Panipat, according to which the factory has not started production and therefore, no export has been made.

d) The Commissioner has confirmed the demand of Rs.2,50,95,388/- which includes a demand of Rs.12,83,539/- towards the raw materials and imposed penalties on the appellant company as well as two Directors of the company who are also appellants before us.

4. Learned advocate fairly submits that they have no evidence in records as of now except the show cause notice of the Development Commissioner and two realisation certificates. He also is not in a position to confirm whether connected shipping bills for two consignments are available. These two consignments relate to only about Rs.3 lakh. He has no other evidence for other export relating to balance of about Rs.60 lakh.

He also submits that the report of the Assistant Commissioner, Panipat has not been made available to them. However, given an opportunity, he assures to produce evidence before the adjudicating authority.

5. Learned Jt. CDR submits that the imported capital goods have not been put to any use. No intimation has been sent to the Central Excise authorities about the commencement of the production. No evidence of any manufacturing was produced. During the relevant period, the appellant was under physical control and therefore, the claim that they have made any export without the knowledge of the Central Excise authorities is not acceptable. The Bank realisation certificates produced do not relate to goods that ought to have been exported by the appellant as 100% EOU. He defends the order of the Commissioner. Further, he submits that he is not sure whether the report of the Assistant Commissioner, Panipat has been made available to the appellant or not by the Commissioner before passing the impugned order.

6. The main issue relates to whether the capital goods have been used for the intended purposes at all. The appellant claims to have used for manufacture and also made exports. Commissioner has held that the capital goods

and raw materials have not been used at all. If the capital goods have been used evidences like labour employed, electricity consumed, issue of raw materials should be available. If the goods worth Rs.63 lakh have been exported as claimed by them there should be other positive evidences like shipping bills, transport documents, purchase orders, invoices, Bank realisation certificates etc. and such evidences have not been placed before the Commissioner who has adjudicated this case. The issue whether the goods have been manufactured and exported using the capital goods and raw materials, can be decided only after proper appreciation of the relevant facts. To enable the same, and in the interest of justice, we deem it proper to set aside the order of the Commissioner and remand the matter for de novo consideration. The appellants are directed to make the written submission along with relied upon evidence within 45 days from the date of receipt of this order. The Commissioner shall make available the copy of the report of Assistant Commissioner, Panipat to the appellants. The Commissioner shall decide the case expeditiously thereafter but within two months after the expiry of time limit given for making written submissions by the appellants. All the issues are kept open.

7. The appeals are allowed by way of remand on the above terms.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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