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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

Appeal No. C/38-39 /2006 - CU[DB] WITH C/CO/133/06 Date 11/02/2009

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

To :
COMMISSIONER OF CUSTOMS,
COMMISSIONERATE, THE MALL, AMRITSAR

COMMISSIONER OF CUSTOMS,AMRITSAR Appellant
Vs
SH. MOHINDER SINGH DIRECTOR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/73-74/09-CUS. DATED 05.02.09 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
   1. SH. MOHINDER SINGH DIRECTOR,
   2. M/S KOCHAR SUNG-UP ACRYLIC LTD.,
      TARAN TARAN ROAD AMRITSAR.

2. Adv. / Consult MR. B.L. NARSIMAHAN, ADV.,
   B-6/10, SAFDERJUNG ENCLAVE,
   NEW DELHI – 110 029.

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
BENCH – Customs

C/38 with C/CO/133/06
C/39/06-Cus

(Arising out of Order-in-Appeal No.78-79/CUS/APPEAL/LDH/05 dt.8.9.05 passed by the Commissioner(Appeals), Ludhiana)

Commissioner of Customs,Amritsar Appellant

Vs

M/s. Kochar Sung Up Acrylic Ltd.
Shri Mohinder Singh Respondent

Appeared for Appellant : Sh. Vijay Kumar,SDR

Appeared for Respondent: Sh. B.L.Narsimhan, Adv.

Coram : Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final

Date of Hearing: 5.2.09
Order No. C/73-74/09 Date__________

Per D.N.Panda:

In these two appeals of Revenue, they have been aggrieved by the order passed by the learned Appellate Authority who came to the conclusion that the entire adjudication was made under presumptions and assumptions.

2. Ld. DR appearing on behalf of the Revenue submits that the Chemical Examination reports revealed that the appellant was liable to charge in respect of the impugned goods. Composition of goods was in question and that was answered by Chemical Examination. Ld. DR submits that there was violation of the requirement of the Notification basing on which import of the goods was made by the respondent. Therefore, they are liable to pay duty. He further submitted that the respondent failed to submit an application for the purpose of retesting

according to the set of procedure of law. When that was not done, reference was not made for a second test. He argues that instead of polyester filament yarn, cotton blended yarn was used in the goods. The respondent has also not accounted for the difference between the quantity of polyester yarn imported and enduse in the process of manufacture.

3. Ld. Counsel Shri B.L.Narsimhan draws our attention to page 22 of the appellate order to submit that at the very beginning, the respondent repeatedly requested for retesting of the goods when the Chemical Laboratory report suffered from legal infirmities. But such a prayer was demolished. He submits that the respondent was not given at all an opportunity of hearing on its defence. A report relied upon by the Revenue although formed basis of show cause notice, that report was not provided to the Appellant. Ld. appellate authority examined the matter in detail. That is very clear from page 21 to 25 of the paper book(page 5 to 8 of the appellate order). Therefore, a speaking order of the appellate authority not being controverted by any cogent evidence, Revenue's appeal is devoid of merit.

4. Heard both sides and perused the records.

4.2 We have noticed that out of 87 consignments, samples were drawn from 57 consignments and 30 consignments remain untested. Learned appellate authority had taken pain to examine even 30 consignments at page 7 of the appellate order. His examination was not controverted by the ld. DR appearing today. Learned first appellate authority was of the opinion that adjudication was based on the presumptions and assumptions.

4.3 So far as 57 consignments are concerned, Ld. Appellate Authority has also examined, manner of composition of the goods. He has not –

found any evidence about the motive of the respondent. We have noticed that Revenue is unable to controvert the submission of the Counsel as to the contention that respondent was not provided opportunity of rebuttal of the Chemical Laboratory report itself, which was basis of SCN. When there was a contest by the respondent to the varacity of the report of chemical laboratory and there was a request for retesting of the samples, Revenue should have come forward to do justice and protect interest of Revenue by a retest. Therefore, ld. appellate authority's conclusion is that there was no cogent evidence to hold against the respondent gets support.

5. With the aforesaid observations and without noticing any legal infirmity with the order of the Ld. appellate authority below, we are unable to disturb that order.

6. In the result, Revenue fails and both the appeals are disposed of with dismissal . In view of such disposal, cross objection stands disposed.

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member (Technical)

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