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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/525 /2006-526 /2006 - CU[DB] Date 25/05/2009

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

To :
C.C. JAIPUR
NCRB, STATUE CIRCLE, JAIPUR

C.C. JAIPUR Appellant
Vs
M/S VIJAY INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/190-191 2009 CU[DB]** dated 15.05.09 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
   M/S VIJAY INDUSTRIES
   230, SINDHI COLONY, RAJA PARK, JAIPUR.
2. Adv. / Consult : Sh. Harpreet Singh, Adv
   46, Bank Enclave, Delhi - 92

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
(Customs Appeal Branch)

18. SH. BABU LAL GURNANI, PARTNER
    M/S VIJAY IND., A-1, SAKET COLONY, ADARSH NAGAR, JAIPUR

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Appeal Nos. C/525-526/2006-Cust. Br.

[Arising out of Order-in-Appeal No.10-11 (MPM) CUS/JPR-I/2006 dated 28sed by the Commissioner (Appeals-I) Customs & Central Excise, Jaipur.]

Date of Hearing:17.04.2009
Date of decision: 17.04.2009

CCE, Jaipur ...Appellant

Vs.

M/s. Vijay Indus. & Shri Babulal Gurnani ... Respondent

Present for the Appellant :Shri Sunil Kumar, SDR
Present for the Respondent :Shri Harpreet Singh, Advocate

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Final **ORDER NO.** C/190-191/09 **DATED:17.04.2009**

PER: D.N.PANDA

Ld. DR Shri Sunil Kumar representing Revenue submits that being aggrieved by the order passed by the ld. Commissioner (Appeals) who held that there was no mis-declaration by the respondent. Revenue has come in appeal. The appellant instead of exporting PVC profile, had exported PVC granules violating the requirement of DFRC Scheme. Revenue was aggrieved for such act in view of contrary finding by learned Commissioner (Appeals). Hence the matter was carried to Tribunal. He submits that the respondent was required to make export of PVC profile against the raw-material allowed to be imported. That not being done by the respondent, the order passed by appellate authority is Reversible. Deviation was noticed by the Revenue when exports were made. The goods were exported under DFRC Scheme declaring the goods to be covered under Sl.No.H/271 of the Standard Input Output Norms (SION) of Export Import Policy 2002/07 (Vol.2). Export was allowed based on declaration. But samples from the consignments were extracted to ascertain correctness of declaration. The samples so extracted were subject matter of test before CRCL, New Delhi. That laboratory has furnished report dated 24.3.04 giving the description on composition of goods as reflected in para 2 of adjudication order. Such report being objected by the respondent, Revenue further proceeded to send another batch of samples, extracted as above and kept in custody of revenue, for retest by CRCL. This is patently clear from para 5.4 of the adjudication order. When such submission was made by the ld. DR, it was strongly objected by the ld. Counsel for the respondent stating that the consignment from which the second sample was obtained by the Revenue was not known to the law and such an averment was before the ld. Commissioner (Appeals). We could notice the same from para 5 (ii) of the Appellate Order.

2. Ld. DR submits that the goods that were exported were only granules but not profiles. He supports his contention relying on the finding made by the ld. Adjudicating Authority under para 13.1 of the order of adjudication. He further submits that a profile can never be chips and vice versa. He therefore, argues that ld. Commissioner (Appeals) should not have submitted himself to hold that PVC profile can be manufactured out of rigid PVC profile extract machine when he has also noticed that chips and profile are distinguished by themselves and that is clear from para 7 of the appellate order. Revenue is not concerned with the manufacturing process of the goods, but the goods perse. The goods exported did not submit to the specification laid down in HSN as per document appearing in page 24 of the appeal folder.

3. He also draws our attention to page 37 to submit that the composition of PVC profile are as described under 10 norms. When the CRCL report and 10 norms prescribed under HSN Classification which safe guards interest of Revenue, ld. Appellate Authority was expected to examine entire issue on that contest. But all these basis points were brushed aside. Ld. Appellate Authority himself held about the manner of manufacture of profile which is irrelevant. Therefore, he submits

that the respondent should not have succeeded before the ld. Appellate Authority below on irrelevant consideration by that Authority.

4. Ld. Counsel appearing for respondent submits that ld. Appellate authority has rightly passed the order examining all aspects of the matter and rightly discarded baseless evidence used against the respondent. That Authority held that there was no mis-declaration and in support of that, reasoning was given by him stating that the goods manufactured by the respondent was PVC profile in common parlance.

5. Heard both sides and perused the records.

6. We are convinced that the contentions of the revenue have force. Common parlance theory is not safe guide where guide lines for determination of nature or character of goods are technically specified and such criteria were available before learned Appellate Authority below. Therefore his order is liable to be disturbed. We are fully convinced that CRCL Laboratory report has provided composition. At least he should have examined that composition with 10 norms as argued by Revenue, aforesaid. That was not done. It is not necessary to dilate the matter further. Once we are convinced that safe guard measure of tests were available before the ld. Appellate Authority as argued

by ld. DR for determination of the nature and character of goods exported, he should have taken that into consideration.

6. In view of our observation aforesaid, we remand this matter to the ld. Appellate Authority below who shall take into consideration the averments of revenue as aforesaid, their grounds of appeal filed, the page Nos. referred to by the ld. DR as aforesaid and granting fair opportunity of hearing to the respondent, he shall come to a rational conclusion about the nature of goods and accuracy of declaration made by respondents to hold whether the same is acceptable to law. We expect that the said authority shall pass a reasoned and speaking order dealing all the issues raised by Revenue. It is also left open to the respondent, to advance all legal pleas and adduce evidence in support of his claim before that Authority. We make it clear that this dispute having been successfully marching from the year of 2005 through 3 forums, the learned Appellate Authority below should not take much time to dispose the matter granting adjournments to the assessee unnecessarily. Expeditious disposal being necessity in this case, the respondent is directed to appear before the ld. Appellate Authority within 30 days of receipt of this order and file an application before him for fixation of date of hearing. It is also left open to the ld. Commissioner to issue notice within 30 days of receipt of order

by him and following due process of law, shall reach to a logical conclusion.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita