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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/266 /2006-267 /2006 - CU[DB]    Date : 22/06/2009

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

To :
COMMISSIONER OF CUSTOMS(PREV.)
CUSTOMS HOUSE, C.R.BUILDING, THE MALL,
AMRITSAR
143001

COMMISSIONER OF CUSTOMS(PREV.)    Appellant

Vs

M/S PUNJAB CONCAST STEEL,(PROP. NAHAR INTERNATIONA    Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/229-30 2009 CU[DB]** dated 12.06.09 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 PUNJAB CONCAST STEEL,(PROP. NAHAR INTERNATIONA
   G.T.ROAD, NEAR RAILWAY STATION, DORAHA, DISTT. LUDHIANA
2. Adv. / Consult
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
17. Guard file
18. M/S PUNJAB CONCAST STEEL,(PROP. NAHAR INTERNATIONA
    G.T.ROAD, NEAR RAILWAY STATION, DORAHA, DISTT. LUDHIANA

Assistant Registrar
(Customs Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No.2, R.K.Puram, New Delhi-110066.**
**Principal Bench, New Delhi.**

**C/266-67/06**

**(Arising out of Order-in-Original No.16/Cus/05 dt.28.2.05 passed by the Commissioner of Customs(Preventive), Amritsar)**

CC(Preventive), Amritsar Appellant

Versus

M/s. Punjab Concast Steel Respondent

Appearance
Sh. Fateh Singh, Authorised Departmental Representative(DR)
For Appellant
None for the Respondent

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

Final

Date of decision: 15.4.09
Order No. C/229-230/09

Per D.N.Panda:

None appeared for the respondent.

2. On the last occasion of hearing on 23.2.09, when the respondents were not present, to grant an opportunity of hearing, we adjourned the matter to 15.4.09 and notice was issued. Today we noticed that the notice has been returned back with the postal remark "no such firm............." This postal remark was made

on 19.3.09. The returned notice in the cover itself is available on the record. It appears that the respondent is not conscious of its right to respond to the appeal filed by Revenue. Therefore, we proceed to decide the matter on its own merit.

2. Ld. DR Shri Fateh Singh appearing on behalf of Revenue, at the outset submits that order of adjudication has dropped the proceedings initiated by the show cause notice without examining the test report issued by CRCL Laboratory. He cites that the goods imported was questionable following CRCL report. According to the report of CRCL, the goods in question were having characteristics of Palm Kernel Fatty Acid with Free Fatty Acid 81.4% by weight as Palmitic Acid. When the report has brought out the characteristics of the tested goods, goods shall not submit to the class of Palm Kernel Acid Oil. Therefore, according to revenue when the goods were subjected to test by CRCL and report dt.1.9.2000 was obtained, SCNs were issued on 9.1.02 and 9.11.01. According to the revenue, on account of misdeclaration of description i.e. the goods being Palm Kernal Fatty Acid as against declared description of Palm Kernal Acid Oil for both the consignments, the value is to be redetermined at the rate of US$ 443/- per T.T. C&F as against declared calue of

US$ 320/- per m.t. Therefore, the proceedings proposed by SCN be confirmed.

3. We heard Revenue extensively and examined the record with details available. We are convinced that the test report of CRCL laboratory was not under challenge without any contradictory evidence brought by the respondent. The respondent had made submission before the Ld. Commissioner that retesting was the alternate to resolve the dispute. But such a proposition was altogether brushed aside. The matter has been proceeded on the basis of technical literature as is apparent from page 14. Ld. Commissioner had no technical advice from CRCL as to the nature of the goods and without consulting CRCL he accepted the Respondent's contention that FFA percentage ~~by~~ ~~qty~~ if expressed as lauric acid will be 63.60% and the goods are Acil Oil not Palm Kernal Fatty Acid.

4. In view of aforesaid observations, it would be proper to remit back the matter to the Ld. adjudicating authority to properly exmine test report available on record in consultation with the CRCL and also look into the aspect of any retesting issue pending on record. He shall deal with the matter in accordance with law by an objective examination of the characteristic of goods in question on the basis of test report.

Ld. adjudicating authority while dealing ~~shall deal~~ with the matter a fresh in accordance with law shall also give ~~giving~~ due regard to the decision cited by the Revenue in the case of Reliance Cellulose Products Ltd. vs CCE, Hyderabad reported in 1997(93)ELT.646(DC) and in the case of Polyglass Acrylic Mfg. Co. Ltd. vs CC, Vishakhapatnam reported in 2003(153)ELT.276(SC). It is left open to the adjudicating authority to hear grievance of the respondent afresh and dispose the matter by reasoned and speaking order.

5. In the result, both the appeals are remanded to the Ld. Adjudicating Authority.

6. We have noticed that the matter is rolling on record from the year 2000. Therefore, the matter is expected to be disposed within three months from the date of receipt of the order.

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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