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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/521 /2006 - CU[DB] Date 06/07/2009

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

To :
CC AMRITSAR
THE MALL,AMRITSAR
CC AMRITSAR Appellant

Vs

M/S SHARMAN WOOLEN MILLS LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/244/ 2009 CU[DB] dated 23.06.09 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 SHARMAN WOOLEN MILLS LTD
   VPO JUGIANA,LUDHIANA
2. Adv. / Consult SUDHIR MALHOTRA, ADV.
   13-R, HUKUM CHAND COLONY,
   NEAR DAV COLLEGE, JALLANDHAR.
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

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 23.6.09

Customs Appeal No.521 of 2006

Arising out of the order in appeal No.69/Cus/CHD/06 dated 8.5.06 passed by the Commissioner of Central Excise (Appeals), Chandigarh.

C.C., Amritsar .... Appellant

Vs.

Sharman Woollen Mills .... Respondent

For Approval and Signature:

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

1	Whether Press Reporter 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 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.R. Meena, Authorized Departmental Representative (DR) for the Revenue and Shri Sudhir Malhotra, Advocate for the respondent

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

Final Oral Order No. C/244/09

Per M. Veeraiyan:

This is an appeal by the Department against the order of Commissioner (Appeals) No. 69/Cus/CHD/06 dated 8.5.06.

2. Heard both sides.

3. The respondent, admittedly, imported bright dyed 3.3 DTEX Acrylic Tow falling under sub-heading No.5501.30 of the Customs Tariff Act and cleared them duty free by producing advance licence. Anti-dumping duty is leviable on import of acrylic fibre falling under sub-heading No.5501.30 or

5503.30, in terms of Notification No.133/2001-Customs dated 31.12.2001. The original authority while dealing with the refund claim, held that the acrylic tow imported by the respondent has to be considered as acrylic fibre and therefore, the same attracts anti-dumping duty, in terms of Notification No.133/2001-Cus cited supra. On appeal by the party, the Commissioner (Appeals) held that the acrylic fibre and acrylic tow are different goods and that anti-dumping duty was chargeable only on acrylic fibre and not on acrylic tow and accordingly, set aside the order of the original authority.

4. Learned SDR submits that the acrylic fibre and acrylic tow are basically the same items and they differ only on length, size. The Notification imposing anti-dumping duty refers to both sub-heading No.5501.30 , 5503.30 and therefore, the implication is that acrylic tow and acrylic fibre should be treated as one and the same. Otherwise, levy under sub-heading 5503.30 under Notification No.133/2001-Cus., will be inoperative. Therefore, he seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of the original authority.

5. Learned Advocate reiterates the finding and reasoning of the Commissioner (Appeals).

6. We have carefully considered the submission from both sides. The relevant findings of the Commissioner (Appeals) accepting the party's appeal is reproduced below:

> " ***The main contention of the appellant is that they have imported acrylic tow falling under sub-heading 5501.30 of Custom Act vide Bill of Entries No.353 dated 19.8.02, 355 dated 19.8.02, 372 dated 24.8.02, 373 & 374 dated 24.8.02 and 375 dated 28.8.02 and the department pressed them to deposit the anti-dumping duty on these goods amounting to Rs.14,10,698/- + interest amounting to Rs.2,66,191/- under protest. As per Notification No.133/2001-Cus dated 31.12.2001, made final vide Notification No.104/2002 dated 9.2.2002 anti-dumping duty was chargeable on acrylic fibre originate or imported from U.K., Germany, Bulgaria & Brazil, but no such duty is chargeable on acrylic tow i.e. the goods imported by the appellant. This view has also been confirmed by the CESTAT in the case of Beeta Exports v. C.C.ASR, 2003 (153) ELT 621 whereas it has been held that 'Acrylic fibre and***

Acrylic tow are different goods. The learned Adjudicating authority erred in not appreciating said factual position. He has not given any findings with regards to the said submission of the appellant.'

The above contention of the appellant is quite correct and convincing in as much as the 'acrylic fibre and acrylic two are two different goods and the anti –dumping duty is chargeable only on acrylic fibre and not on acrylic tow'.

The further contention of the appellant that the duty in question was got deposited by the department under pressure , after expiry of limitation period, i.e. the Bill of Entries were assessed from 19.8.02 to 26.8.02 and the duty was got deposited on 3.12.2003. I fully agree with this contention of the appellant in as much as the duty deposited after the expiry of one year were clearly time barred and further the show cause notice dated 31.12.04 issued for recovery of said duty amount was also time-barred, because it is neither a case of any suppression of facts nor any wilful attempt to evade any duty when no duty is chargeable on the goods in question held by the CESTAT in para 5.2 of the order supra, which clearly says that anti-dumping duty imposed on acrylic fibre by Notification No.81/97-Cus cannot be imposed on acrylic tow. Therefore, duty deposited by the appellant is refundable to them as the doctrine or unjust enrichment is not applicable when duty paid subsequent to clearance of goods. This view has been taken by the CESTAT in the case of Gujarat State Fertilizer vs. C.C.E.- 2005 (180) ELT 607 TM.

The order in original rejecting the refund claim is set aside."

7. We are dealing with the case of levy of anti-dumping duty by a Notification issued by the Central Government under Section 9A(2) of the Customs Tariff Act on the basis of the findings of the designated authority. This levy is imposed after detailed investigation as prescribed under special law and after hearing the concerned parties including the importer, domestic industries and the exporter and other interested parties. The levy cannot be based on implication. The levy is clearly on acrylic fibre . Customs Tariff 5501 at 4 digit level refers to acrylic tow and 5503 refers to acrylic fibre. Therefore, there is conscious distinction between the acrylic tow and acrylic fibre. Notwithstanding the fact that sub-headings 5501.30 and 5503.30 have been mentioned in the notification, the levy is only on import of acrylic fibre. It cannot be extended to acrylic tow by any implications.

8. In view of the above, we are in agreement with the above finding and reasoning adopted by the Commissioner (Appeals). No valid ground is adduced to interfere with the said finding.

9. Appeal filed by the Department is, therefore, rejected.

(M. veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/