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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/148 /2006 - CU[DB] Date 20/11/2009

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

To :
M/S UNIWORTH LTD

THROUGH COUNSEL SHRI RUPESH KUMAR, 923-945,
URLA INDUSTRIAL AREA, SARORA, RAIPUR
M/S UNIWORTH LTD Appellant

Vs

CC RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/417/ 2009 CU[DB] dated 06.11.09 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

   CC RAIPUR, CENTRAL EXCISE BUILDING,

   DHAMTARI ROAD, RAIPUR (C.G.)
   492001
2. Adv. / Consult
   MR.RUPESH KUMAR

   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)
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: 29.10.2009

Customs Appeal No.148 of 2006

Arising out of the order in original No.Commissioner/RPR/40/2003 dated 28.10.2005 passed by the Commissioner of Customs and Central Excise, Raipur.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)
Hon'ble Shri D.N.Panda, 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?	
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
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

M/s Uniworth Ltd. ... Appellant

Vs.

C.C.E., Raipur .... Respondent

Appearance:

None for the appellants
Shri S.K. Panda, Authorized Departmental Representative (Jt.CDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)
Hon'ble Shri D.N.Panda, Member (Judicial)

Oral Order No. C/417/09

Per D.N. Panda:

Against the Adjudication Order dated 28.10.2005, the appellant came in appeal on 16th February, 2006 before Tribunal with stay application. The stay application was dismissed by Tribunal by an order dated 28.4.2006 directing the appellant to make deposit of 50% of penalty of

Rs.1,02,97,365/- within 8 weeks from the date of hearing and make compliance on 5.7.2006.Such order was passed taking into consideration that the goods seized remained in custody of appellant under "superdinama".

2. When no compliance to the stay order was made, by order dated 5.7.06 appeal was dismissed. But subsequently by order dated 11.10.06 appeal was restored noticing that the appellant carried out direction of Hon'ble Supreme Court in respect of pre-deposit.

3. When the appeal was listed for hearing, there was no participation at all by the appellant in the whole of the year 2008. When the matter was called on 24.7.2009, the appellant has failed to place its case but sought adjournment. On 29.10.2009 when the matter was called, none present for appellant nor any request for adjournment. But a fax ~~order~~ dated 24.9.09 came to record stating that due to labour strike in the plant of the appellant, they are not able to attend the hearing. Therefore, without keeping the matter pending, examination of record was done.

Record revealed that the Adjudicating authority framed following issues in para 13 of the order at page 26 of appeal folder as under:

> ***"(i) Whether the machines detailed in Annexure – "A" of the Show cause Notice valued at Rs.1,68,92,017/- and machine detailed in Annexure – "B" valued at Rs.80,32,948/- are liable to confiscation under Section 111 of the Customs Act, 1962;***
>
> ***Iii) Whether the customs duties of Rs.81,20,489/- and CVD Rs.21,76,876/- amounting to total Rs.1,02,97,365/- is leviable under Section 72 of the Customs Act, 1962 on the goods detailed in Annexure –"A" and Annexure – "B" of the Show Cause Notice and whether the same is recoverable from the Noticee under Section 28 and 72 of the Customs Act and in terms of the conditions of the Notification No.13/81-Cus dated 9.2.1981 and the Bonds furnished by them.***
>
> ***(iii) Whether penalty equal to the amount of duty evaded is imposable upon the Noticee under Section 114A of the Customs Act, 1962;***

(iv) Whether penalty under Section 112 of the Customs Act, 1962 is imposable upon the Noticee and ;
(v) Whether interest on the delayed payment of duty under Section 28AB of the Customs Act, 1962 is recoverable from the Noticee or not?"

Listing of the matter although has been made from time to time and despite notices having been issued, the appellant is not causing presence to participate for hearing when they have faced demand as above.

4. Record reveals that the appellant initially set up a 100% EOU in 923-945, Industrial Area, Uria, Raipur for manufacture of worsted sup yarn & pure wool yarn and other items. Later in the same premises the appellants ~~apeplants~~ established a unit in DTA as a 'Silk Division' for manufacture of wool silk blended yarn for which they obtained registration from Superintendent, Central Excise Range -IV, Raipur on 23.05.95. The 100% EOU and that DTA units operated separately and distinctly. The 100% EOU was a distinct unit and was required to fulfil the stipulated conditions, which governed duty free imports.

5. The appellant imported machines as detailed in Annexure A to the show cause notice under Notification No.13/81-Cus dated 9.2.1981 as amended without payment of customs duty for use in their 100% EOU. Subequently, these machines were transferred to their Silk Division Unit in DTA without following the procedure including de-bonding and without payment of customs duties at appropriate rate which appears to be in contravention of the condition stipulated in the said Notification No.13/81-Cus dated 9.2.1981 and import policy April 92 – March 93. the appellant also admitted that no permission from Development Commissioner or any authority was sought for shifting the machine from 100% EOU to their Silk Division DTA. However, the appellant contended before the Authority below that the said machines were temporarily taken to the adjacent Silk Division solely and exclusively for the purpose of carrying out the required experiment/trials for manufacture of silk based export products of their 100% EOU. This was more

as a part of their research and development activities relating to the promotion of exports of the goods manufactured in 100% EOU. This contention of the appellant was found to be in variance with the explanation given by Shri Subhash Chandra, Kalra, Vice President (Works) in his statement dated 23.8.96. He had stated that these machines were shifted to the Silk Division as the same were old and were not found to be working satisfactorily. Therefore, this plea taken by the appellant was found to be unacceptable by the learned Adjudicating Authority in view of the fact that the machines imported duty free for the 100% EOU units were shifted to the Silk Division and such transfer and shifting of machines amounts to removal from the EOU unit to the silk Division unauthorisedly and not in the manner known to law.

6. The appellant transferred duty free imported machines under 100% EOU scheme in terms of Notification No.13/81-Cus to their Silk Division (DTA) for use in the manufacture of silk yarn without following the procedure and without payment of an amount equal to the customs duty leviable on such goods. They were also required to follow certain procedure prescribed in the Notification from time to time. Further, the appellant failed to obtain necessary permission from the Development Commissioner and to get such items/goods de-bonded after intimating and taking prior permission of the Central Excise Department and to pay central excise duty so determined by the Central Excise Department. They did not follow the procedure in this regard and did not bring the fact ~~to their~~ of shifting of the said goods/items from their wool division, (100% EOU) to Silk Division, DTA, to the knowledge of the Central Excise Department. Hence the entire goods as detailed in Annexure 'A' to the show cause notice were confiscated under Section 111 of the Customs Act, 1962.

7. As regards the machine mentioned in Annexure 'B' of the show cause notice, the plea of the appellant during adjudication was that the said machine was imported by their Silk Division from M/s Cascami Seta Filature Delle, Venezia S.P.A. Italy under Invoice No.1997 dated 15.11.1990 having

cost of US Dollars 12625.00 along with 1 cutting machine having value USD 24000 under Bill of Lading No.GNACCTTO-038 dated 26.11.1990. The said machines were cleared from the Customs under Bill of Entry No.1570 dated 19.12.1990 on payment of customs duties amounting to Rs.2,90,229/-. Such claim was made on the basis of the photocopies of invoice, Bill of Lading and Bill of Entry produced before the Authority below. Besides these, they also submitted a report of the machinery expert regarding identification of the said machine lying installed in their silk division with the aforesaid import documents to the learned Adjudicating Authority.

8. On the aforesaid factual matrix, learned Adjudicating Authority found that the documents relate to 'Silk Opener'. Also in the Certificate of the Chartered Accountant produced, it was mentioned that function of machine is to open the silk fibre tufts enabling better individualisation to be carried out at a later stage. The Authority inferred that the documents produced before Customs Authority refer only to a machine called Silk Opener or a Silk Opening Machine whereas the Annexure 'B' to the show cause notice and the panchnama describe the machine as 'Opening and Blending Machine'. Accordingly, learned Adjudicating authority held that the abovesaid Bill of Entry No.1570 dated 19.12.1990 does not refer to the machine under seizure which was described as 'Opening and Blending Machine' in the panchnama. Accordingly, he was of the view that 'Opening and Blending Machine' installed in the silk division (DTA) as mentioned at Annexure – B of the show cause notice was not imported on payment of Customs duty. Thus, the said machine as mentioned in the Annexure –B to the show cause notice was confiscated being not imported through a licit channel and the appellant was made liable to pay duty amounting to Rs.30,12,355/- as detailed in the show cause notice.

9. Findings of learned Adjudicating Authority as aforesaid gave rise to the adjudication of presently under appeal before Tribunal.

10. Learned DR appearing on behalf of Revenue supported order of the Authority below. Record was examined thoroughly in absence of appellant. Grounds of appeal to the Assessee when perused ~~that~~ did not bring out any evidence to contradict findings of learned adjudicating authority.

11. It appears that that the appellant is not interested to pursue the appeal for hearing for which the matter is ageing on record year after year since appeal was instituted in 2006. For non-prosecution of the appeal and finding no evidence to disturb adjudication order, the appeal is dismissed.

(M. Veeraiyan)
Member (Technical)

(D.N.Panda)
Member (Judicial)

scd/