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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/276 /2008 – SM[BR] Date 11/02/2010

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

To :
C.C.E. LUDHIANA

CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA Appellant

Vs

M/S NAHAR INDUSTRIAL ENTERPRISES(CEMENT UNIT) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 181 / 2010 –SM[BR] dated 20.1.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

   M/S NAHAR INDUSTRIAL ENTERPRISES(CEMENT UNIT)

   (PREVIOUSLY KNOWN AS M/S OSWAL COTTOM MILLS) FOCAL POINT, LUDHIANA.

2. Adv. / Consult

   NONE;-------------

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
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:20.01.2010

Appeal No.E/276/08-SM

[Arising out of Order-in-Appeal No. 317/CE/Appl./Ldh/2007 dated 22.10.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh].

For approval and signature:

Hon'ble Mr.Rakesh Kumar, Member (Technical)

1	Whether Press Reporters 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 the 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?	
4	Whether Order is to be circulated to the Departmental authorities?	

CCE, Ludhiana ...Appellant

Vs.

M/s. Nahar Industrial Enterprises ... Respondent

Present for the Appellant :Shri.V.K. Saxena, Jt. CDR
Present for the Respondent:None

Coram: Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final **ORDER NO.** 181/2010 SM(Br) **DATED:20.01.2010**

PER: RAKESH KUMAR

This is an appeal by the Revenue against Order-in-Appeal No.C/317/CE Appl/Ldh/2007 dated 22.10.07 passed by the Commissioner, Central Excise (Appeals), Jalandhar by which he set aside the Order-in-Original No.93/CE/JC/LDH/2006 dated

10.10.2006 passed by Jt. Commissioner, Central Excise, Ludhiana.

2. Facts giving rise to this appeal are, in brief, as under:-

2.1 The Respondents manufacture readymade garments. They took the Central Excise Registration for manufacture of branded garments in March, 2001. In the course of audit of Central Excise records, it was found that during April 2001 that they had cleared goods described as "unbranded readymade garments" valued at R.52,65,217/- under six invoices No. 102 to 107, dated 30th April 2001 without payment of duty under Notification No.12/01 CE dated 1.3.01. The record of production in RGI Register maintained by the Respondent did not show any production or clearances of unbranded readymade garments and similarly the ER-1 return for the month of April 2001 also did not show any clearances of unbranded readymade garments. Since the explanation for this given by the respondent was not satisfactory, a show cause notice dated 28.4.06 was issued to the Respondent alleging that goods cleared under invoice No.102-107 dated 30th April 2001 were branded readymade garments which had been wrongly cleared without payment of duty by availing the exemption Notification No.12/01-CE and they had deliberately shown the clearances of branded readymade garments as unbranded in order to evade the payment of duty. Show cause notice sought recovery of duty of Rs.6,32,016/- alongwith interest under section 11AB of Central Excise Act, 1944 and also imposition of penalty on the Respondent under section

11AC of Central Excise Act. The show cause notice was adjudicated by the Jt. Commissioner vide Order in Original No.93/CE/JC/LDH/2006 Dated 10.10.06 by which duty demand of Rs.6,32,016 alongwith interest was confirmed and penalty of equal amount was imposed on the Respondent under section 11AC. However, on appeal, the Commissioner (Appeals) vide Order in Appeal No.317/CE/APPL/Ldh/2007 dated 22.10.07 set aside the Jt. Commissioner's order on the ground that other than not reflecting the production in clearance of the unbranded garments in the Central Excise records, there is no other evidence that the goods cleared under the invoices No.102-107 dated 30.4.01 were of branded readymade garments. It is against this order of the Commissioner (Appeals) that the revenue has come in appeal.

3. Heard both the sides.

3.1 Shri V.K.Saxena, ld. JDR, assailing the impugned order and reiterating the ground of appeal in the Revenue's appeal, pleaded that neither the production of unbranded readymade garments was reflected in the RG-1 Register nor it was declared in the ER-I return for the manufacture of April 2001, that it was not proper on the part of the Commissioner (Appeals) to have observed in his order that the Department's case is merely based on assumptions and presumptions, that not reflecting the production of unbranded readymade garments in the RG-1 register and ER-1 return is not a technical mistake and that the conduct of the Respondent shows that what had been cleared under invoice Nos.102-107 dated 30.4.01 was branded readymade garments as the appellants during that period were manufacturing branded readymade garments only.

3.2. Shri Rupender Singh, Advocate, the ld. Counsel for the Respondent, defended the impugned order emphasising that other than not reflecting the production of unbranded readymade garments in the ER 1 return and the RG 1 Register, there is no evidence that the goods cleared under the invoice Nos.102-107 dated 30.4.01 were branded readymade garments, that the Respondent had taken central excise registration for manufacture of branded garments only in March, 2001 and prior to March, 2001 they were manufacturing unbranded readymade garments which were fully exempted from duty, that since central excise registration has been taken only in March, 2001, due to misunderstanding and clerical mistake, clearance of unbranded readymade garments were not recorded in the RG 1 register and not reflected in the ER 1 return, that from this , it cannot be presumed that the goods cleared under the six invoices dated 30.4.2001 were branded fabrics, and that it is settled law that the burden of proving the allegation of duty evasion is on the revenue, which in this case has not been discharged by producing any evidence, and that while six invoices dated 30.4.2001 mentioning the names of the buyers, no enquiry has been made by the Department with the buyers to ascertain as to whether the readymade garments supplied under these invoices were branded or unbranded readymade garments. In view of the above, he pleaded that there is no merit in the Revenue's appeal.

5. I have carefully considered the submissions from both the sides and perused the records. I find that the only basis of the Department's allegation that the goods covered under the six invoices No.102 to 107 dated 30.4.2001 were branded garments is that neither the production of unbranded readymade garments has been recorded in the RG 1 Register for the relevant period, nor the clearances of any unbranded readymade garments is reflected in the ER 1 Register for the month of April 2001 . Though the invoices mentioned the names of the buyers, no enquiry has been made with the buyers for ascertaining as to whether readymade garments supplied under these invoices were branded readymade garments or unbranded readymade garments. It is settled law that burden of proving clandestine removal without payment of duty is on the revenue, while in this case the revenue's allegation is not supported by any cogent evidence. In view of this, I hold that there is no infirmity in the impugned order. The revenue's appeal is dismissed.

[Dictated & Pronounced in the open Court].

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita