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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/2429/2007 – SM[BR] Date 13/01/2010

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR II — Appellant

Vs

M/S SUNLIGHT INDUSTRIES — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 73 / 2010 –SM[BR] dated 5.1.2010 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 SUNLIGHT INDUSTRIES
   MANDIA ROAD, PALI (RAJASTHAN)
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
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(SM Appeal Branch)

0CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing/decision: 05.01.2010

Excise Appeal No. 2429 of 2007-SM
[Arising out of order in appeal No. 365(HKS)CE/JPR-II/2007 dated 12.6.2007 passed by the Commissioner (Appeals) Customs and Central Excise, Jaipur].

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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?	Y

CCE, Jaipur   Appellants

Vs.

M/s Sunlight Industries   Respondents

Appearance:

Appeared for the Appellant – Shri V.K. Saxsena, Jt. CDR
Appeared for the Respondent – None

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President

Oral Order 73/2010 SM (BR)

Per Shri Justice R.M.S. Khandeparkar:

Heard the learned DR and perused the records. None present for the respondents. The records do not disclose service of notice upon the respondents for hearing of the matter.

2. In fact, matter had been coming up for hearing since 29.06.2009 and had come up for hearing on 29.6.2009, 13.8.2009, 6.10.2009, 19.11.2009 and on none of those occasions, the notice was served upon the respondents and, therefore, none had appeared for the respondents. The records disclose that notice could not be served as the address of the respondents was incomplete. No steps appear to have been taken by the department either to furnish the correct and complete address of the respondents or to ensure the service of the notice upon the respondents. One wonders whether department is really interested in pursuing the matter seriously or not.

3. Perusal of the records disclose that Anti Evasion team of the Central Excise Commissionerate, Jaipur in its surprise visit on 09.09.2001 to the factory premises of M/s Shree Rohit Syn Fab (P) Ltd., located five delivery challan books containing entries relating to dispatch of processed man made fabrics to various parties. On the reverse of those delivery challans, the slips containing the details of number of thans and quantity of man made fabric for different parties were found pasted. It was noticed that the slips were issued by the parties who had sent the fabric in question to M/s Shree Rohit Syn Fab (P) Ltd., for processing. Challan books alongwith other records and documents were seized by the excise authorities and on scrutiny thereof it was found that the quantity of processed man made fabrics cleared vide the delivery challans did not tally with the quantity entered in the statutory records of the unit and it was noticed that the quantity was processed and cleared without being accounted for in the statutory records. On these allegations show cause notice came to be issued after conclusion of the investigation by the department which was contested by the respondents. However, the Deputy Commissioner by its order dated 31.1.2007, confirmed the demand of duty to the tune of Rs.

107014/- alongwith interest thereon and also imposed equal amount of penalty.

4. The matter was carried in appeal whereupon the order was set aside and matter was remanded under Commissioner (Appeals)'s order dated 31.05.2006. On remand, the Deputy Commissioner confirmed the demand to the tune of Rs. 107014/- alongwith interest thereon against the respondents and also imposed penalty of equal amount. Being aggrieved, the matter was carried before the Commissioner (Appeals) by the respondent which came to be allowed by impugned order dated 11.06.2007.

5. Though, the impugned order is sought to be challenged on various grounds, facts remains that the appellants are not able to counter or dispute two important findings arrived at by the Commissioner (Appeals). They are:-

(i) The matter was remanded to the adjudicating authority under order dated 31.05.2006 by the Commissioner (Appeals) to essentially ascertain whether the process carried out by the respondents was with the aid of power of steam; however, the adjudicating authority instead of ascertaining the same by analyzing the materials on records in proper perspective, merely held that the contention of the assessee that they do not have the facility to process the fabric is unbelievable as in case they did not have such facility to process the fabrics, they could not have cleared the processed man made fabrics to M/s Rohit Fab. The analysis on record nowhere disclose the period for which the assessee is stated to have cleared the processed man made fabric to M/s Rohit Fab. Since the matter was specifically remanded to ascertain whether the process carried out by the respondents was with the aid of power of steam, it was necessary to the adjudicating authority to ascertain whether the department has produced any evidence in that regard and whether it was cogent and to be acted upon it to arrive at the finding about the duty liability of the assessee.

6. The learned Jt. CDR appearing for the appellants has fairly stated that the records placed before the adjudicating authority did not disclose detail investigation in this regard by the department. Indeed, records placed before me also do not reveal any such investigation having been carried out by the department in that regard. Being so, as rightly observed by the Commissioner (Appeals) the finding on the relevant issue by the adjudicating authority is solely on mere assumption and is not based on proper analysis of the materials on record.

7. The Commissioner (Appeals) has clearly observed that the duty liability in relation to the product in question was already confirmed against M/s Shree Rohit Syn Fab Pvt. Ltd., and, therefore, there can not be any demand of duty in respect of manufacture of the same product against the respondent. The appellants have not been able to find any fault with the said finding. Being so, there is absolutely no merit in the case of the department and there is no case for interference in the impugned order.

8. For the reasons stated above, therefore, I find no justification for interference in the impugned order. Hence, the appeal fails and is rejected.

(Justice R.M.S. Khandeparkar)
President

/Pant/