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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. C/45 /2009 – SM[BR] Date 19/11/2009

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

To :
M/S A.B TEXTILES
15 A, GEETA COLONY, TAJPUR ROAD, LUDHIANA

M/S A.B TEXTILES Appellant

Vs

C.C. (PREVENTIVE) AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1450 / 2009 –SM[BR] dated 12.11.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C. (PREVENTIVE) AMRITSAR
   CUSTOM HOUSE, CENTRAL REVENUE BUILDING, THE MALL, AMRITSAR 143001.
2. Adv. / Consult
   MR.SAURABH KAPOOR, ADVOCATE
   11-YADVINDRA COLONY, THE MALL, PATIALA 147001

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
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Customs Appeal No.45 of 2009-SM Branch

[Arising out of Order-in-Appeal No.92/REV/CUS/LDH/08 dated 30.07.2008 passed by the Commissioner of Customs (Appeals), Chandigarh]

Date of Hearing/ Decision:12.11.2009

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see 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?	:	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

M/s. A.B. Textiles ...Appellants
(Rep. by Shri Saurabh Kapoor, Advocate)

Vs.

CC, Amritsar ....Respondents
(Rep. by Shri S.K. Bhaskar, DR)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**

Final Order No. 1450/2009 SM (Br) /Dated:12.11.2009

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No.92/REV/CUS/LDH/08 dated 28.07.2008.

2. Heard both sides.

3 The relevant facts, in brief, are that the appellants imported consignments of textile machinery and declared the value as US $3000 per set, which was enhanced to US $4500 per set and as a result, the appellant paid a sum of Rs.3,55,423/- as against the duty of Rs.2,13,148/- payable as per value declared by the appellant. The appellant claims to have paid the differential duty under protest. Subsequently, the valuation issue was resolved in favour of the appellant by the Order dated 28.09.2007 of the Commissioner (Appeals). When they claimed refund, the Original Authority based on Chartered Accountant's certificate held that the claim was not barred by unjust enrichment and allowed the refund. On appeal by the Department, the Commissioner (Appeals) has set aside the order of the Original Authority sanctioning the refund.

4. Ld. Advocate for the appellant submits that in the Departmental appeal against the order passed by the Original Authority, the personal hearing was attended by the Advocate on 2.7.2008 and the Advocate undertook to file written submissions within a week's time. There was some delay in filing the said written submissions. However, he sought for some additional time. However, the Commissioner (Appeals) has passed the order before they could file the written submissions. He also submits that the amount of differential duty of Rs.1,42,275/- paid under protest was being shown as receivable from Customs in the Books of Accounts and that they have indeed received the same before the end of financial

year and these facts could not be placed before the Commissioner (Appeals) due to delay in filing the written submissions.

5. Ld. DR reiterates the findings of the Commissioner (Appeals).

6. I have carefully considered the submissions from both the sides. I find that the order of the Original Authority is in favour of the appellant. The Commissioner (Appeals) have permitted the appellant to make submissions before him. The appellant has delayed the filing of the written submissions which raised new points, which, according to the ld. Advocate, have bearing on the issue of unjust enrichment. As the Commissioner (Appeals) could not consider these submissions, in the interest of justice, I deem it appropriate to set aside the order of the Commissioner (Appeals) and remand the matter before the Commissioner (Appeals) for fresh consideration after granting reasonable opportunity of hearing to the appellant. The appellant permitted to file the written submissions within 30 days from today. Thereafter, the Commissioner (Appeals) shall decide the issue afresh expeditiously.

7. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 12.11.2009.

(M. Veeraiyan)
Member (Technical)

Ckp.