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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/506 /2009 – SM[BR] Date 08/03/2010

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S SEEMA EXPORTS, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 291 / 2010 –SM[BR] dated 4.3.2010 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
   M/S SEEMA EXPORTS,
   104/90-A(16), WAJIDPUR, JAJMAU, KANPUR.
2. Adv. / Consult SHRI BIPIN GARG NADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

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

Appeal No.Customs/506/09- SM (BR)

[Arising out of Order-in-Appeal No.64/CUS/APPL/KNP/09 dated 25.03.2009 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:04.03.2010

For approval and signature:

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

CCE, Kanpur ...Appellants

(Rep. by Shri S.N. Srivastava, SDR)

Vs.

M/s. Seema Exports ...Respondent

(Rep. by Shri Bipin Garg, Advocate and Shri Amit Awasthi, Advocate)

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

Final Order No. 291/2010 SM(BR)/Dated:04.03.2010

<u>Per M. Veeraiyan:</u>

This is an appeal by the Department against the order of the Commissioner (Appeals) No.64/CUS/APPL/KNP/09 dated 25.03.2009.

2. Heard both sides.

3. The relevant facts, in brief, are that the respondents filed shipping bills for export of 100096.25 square feet declaring the same as finished leather from hides of buffalo and declared value of 41,49,475/-. It appears that a sample was drawn and sent to Central Leather Research Institute for the purpose for testing whether the goods could be considered as finished leather or otherwise as leather other than finished leather was subject to export duty. The test report dated 15.10.2007 received from CLRI, Kanpur revealed that the said goods were not finished leather as per norms. Accordingly, a show cause notice dated 28/31.03.2008 was issued proposing demand of export duty on consignment already exported. Original Authority confirmed the demand of duty. On appeal by the party, the Commissioner (Appeals) set aside the demand on merits and also held that the demand is time barred.

4. The Commissioner (Appeals) took into account the plea of not following proper procedure in drawing the samples and held that the report was vague and held that the declaration regarding the description of the goods given by the respondents should be accepted.

5. Ld. SDR reiterates the grounds of appeal and seeks setting aside of the order of the Commissioner (Appeals) and restoration of the order of the Original Authority.

6. Ld. Advocate strongly supports the order of the Commissioner (Appeals).

7. I have carefully gone through the records of the case. Apparently, the examining officers entertained a doubt as to whether the export consignment could be treated as finished leather or otherwise for the purpose of determining whether export duty is leviable. In such a situation, it was expected that the samples should have been drawn and a test bond should have been taken from the respondent in terms of Section 18(1)(b) of the Customs Act. In the present case, undisputedly, the samples were not drawn following the correct procedure and no set of samples has been given to the representative of the respondent. From the records, it also appears that no test bond has been taken. The copy of the shipping bill produced by the ld. Advocate also does not indicate that the assessment was provisional. Under these circumstances, the claim by the Department that the assessment was provisional cannot be accepted. Once the assessment is not provisional, show cause notice for demanding duty should have been issued within six months from the relevant date. Undisputedly, show cause notices have been issued after six months.

8. In the light of the above, I do not find any valid reasons to interfere with the order of the Commissioner (Appeals).

9. The appeal of the Department is, therefore, rejected.

Order dictated & pronounced in open court on 4.3.2010.

(M. Veeraiyan)
Member (Technical)

Ckp.