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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/176 /2009 – SM[BR] Date **24/12/2010**

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

To :
C.C.E. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR,
GHAZIABAD 201302

C.C.E. GHAZIABAD Appellant

Vs

M/S DEVTARA INDUSTRIES (FORMERLY KNOWN AS M/S DEVTARA RAG RUGS H/L), Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1479 / 2010-SM[BR] dated 11.11.2010 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 DEVTARA INDUSTRIES (FORMERLY KNOWN AS M/S DEVTARA RAG RUGS H/L),
HINSALI ROAD INDUSTRIAL
AREA, MEERUT ROAD, MURAD
NAGAR, GHAZIABAD.
2. Adv. / Consult SHRI V.K.SEHGAL ADV.
M/SRESPONDENT:---------------
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No. 176/09-SM

(Arising out of order in appeal 202/CE/Gzb/08 dated 16.10.2008 passed by the Commissioner of Central Excise (Appeals), Ghaziabad)

Date of Hearing: 11.11.2010

For approval and signature:

Hon'ble Mrs Archana Wadhwa, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982? No
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? Yes

CCE, Ghaziabad — Appellants

Vs

M/s Devtara industries — Respondent

Appeared for the Appellant: Shri S.K. Bhaskar, DR
Appeared for the Respondent: Shri V.K. Sehgal, Advocate

Coram: **Hon'ble Mrs Archana Wadhwa ,Member (Judicial)**

Final ORDER 1479/2010 SM (BR)

Per Archana Wadhwa:

Being aggrieved with the order passed by the lower authorities, Revenue has filed the present appeal.

2. I have heard Shri S.K. Bhaskar, learned DR appearing for the Revenue and Shri V.K.Sehgal, learned Advocate for the respondents.

3. The respondents are engaged in the manufacture of textile and textile articles falling under Chapter 52, 55, 58 and 63 of First Schedule to the Central Excise Tariff Ac, 1944. They filed a refund claim for Rs. 4,38,774/- for the period 1.6.06 to 30.6.06 in terms of the provisions of Rule 5 of Cenvat Credit Rules, 2002. The said claim was filed by them on the ground that as their final product stands exported and they are not in a position to utilize the Cenvat credit of duty paid on the inputs.

4. The said claim was sanctioned by the adjudicating authority. Being aggrieved with the order of the Assistant Commissioner, Revenue has filed the appeal before the Commissioner (Appeals) on various grounds.

5. The Commissioner (Appeals) examined the grounds put forth by the Revenue and a detailed order stands passed by him. It stands observed that there is no dispute that the respondents final product was exported during the period 1.6.06 to 30.6.06 and all the relevant documents were filed by the assessee.

6. Verification report of the Range Superintendent was also procured. He also observed that perusal of ARE-I as submitted by the respondents revealed that the export is not under claim of duty paying document and undertaking to that effect below stands given by the assessee. The lower authorities have also considered the fact that export clearances are more than 93% in the first three months prior to June 2006 and there was sufficient balance in the Cenvat account so as to cover the duty payment of home consumption. As such, it has to be held that the assessee was not in a position to utilize the credit on duty paid on the inputs. He also considered the Revenue's objection that the format for filing the refund claim was changed w.e.f. 14.3.06

and as such, filing of refund claim for the month of June cannot be made the basis for rejecting the refund claim specially when all the material particulars are available.

7. Revenue in their memorandum of appeal have again contested the ground of refund claim on the very preposition of the claim having been filed in the old format. I really fail to understand as to how the format for claim of refund would be a deciding factor on the availability or otherwise of the refund claim. Merely because the claim was filed in an old format by itself, cannot be made a ground for denial of credit. Similarly, the Revenue's objection that the assessee was having home clearances also and should have used the credit for payment of duty on the same, does not seem to carry much weight inasmuch as the finding of fact that 93% clearances were export related, does not stand rebutted by the Revenue. In any case, if the credit available can be utilized for payment of indigenous clearances, no assessee would like to claim refund of the same and to pay duty on home clearances out of their PLA.

8. In view of the above, I find no merits in the Revenue's appeal and accordingly reject the same.

(ARCHANA WADHWA)
Judicial Member