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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Date 12/04/2010

Appeal No. E/1044/2005 - EX[DB]

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 MALWA COTTON SPINNING MILLS LTD — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 185/ 2010 EX[DB]** dated 09-4-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   M/S MALWA COTTON SPINNING MILLS LTD
   RAIKOT ROAD BARHALA (PUNJAB)
2. Adv. / Consult MS. ASMITA NAYAK, ADV., C/O
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

3 C.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
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

DATE OF HEARING : 30/03/10.

Excise Appeal No. 1044 of 2005

[Arising out of the Order-in-Appeal No. 46/CE/APPL/LDH/2005 dated 31/01/2005 passed by The Commissioner (Appeals), Central Excise, Ludhiana.]

CCE, Ludhiana — Appellant

Versus

M/s Malwa Cotton Spinning Mills Ltd. — Respondent

Appearance

Shri Nitin, Authorized Representative (SDR) – for the appellant.

Ms. Asmita Nayak, Advocate – for the Respondent.

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Order No. 185/2010 EX Dated : ____________

ORDER

Per. D.N. Panda :-

This is second attempts by Revenue to bring the assessee to the Court of law alleging requirement of the exemption No. 8/97-C dated 1/3/97 unfulfilled. The case of the Revenue is that the respondent assessee failed to maintain proper accounts to distinctly disclose the output of the indigenous raw material and imported raw material. So also the assessee being a 100% export oriented unit has failed to prove beyond doubt the use of the goods for the purpose that was meant to claim the exemption under Notification No. 8/97-C dated 1/3/97.

2. Learned DR appearing on behalf of revenue invited attention to the respective adjudication finding made on the basis of report of the Range Officer and also examining the records. According to him no separate records of production being maintained, there is no distinction between the output coming out of different types of input used for which the assessee is dis-entitled to the benefit of the notification. He reiterates that not only the notification benefit is to be read alongwith the Circular No. 442/8/99-CX dated 04/03/1999 but also that is to be readwith the clarifications given by Circular No. 85/2001-Cus. dated 21/12/2001. According to Revenue, learned Commissioner (Appeals) has not looked into the adjudication finding but abruptly come to the conclusion.

3. Learned counsel on behalf of the respondents submits that for the same reasons when the learned Commissioner (Appeals) passed an order on 29/01/04 in the order-in-appeal No. 358/CE/APPL/LDH/04 dated 29/04/04, Revenue came in appeal to Tribunal against that and that was dismissed. Such a dismissal order was also upheld by Hon'ble High Court of Punjab & Haryana. In view of such scenario, the extent of exemption given by learned Commissioner (Appeals) cannot be faulted without any cogent evidence to the contrary.

3. Heard both sides and perused the records. We notice that the assessee came out with clean hands to prove its stand beyond doubt. We are unable to doubt modus operandi of the Assessee. Learned Commissioner (Appeals) has categorically came to the conclusion that it is possible to identify each output whether produced out of imported/indigenous raw material separately and no quantity of good produced out of imported raw material has been cleared in DTA by the appellants. Such a conclusion comes out from page 3 of the appellate order, we are not able to find decision of learned Commissioner (Appeals) otherwise unreasoned or untenable. Therefore we dismiss the appeal of Revenue.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK