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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/ 4055/ 2003 – SM[BR] Date 23/09/2010

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

To :
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI I Appellant
Vs
M/S PASHUPATI HARYANA WOLLEN LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1021 / 2010-SM[BR] dated 6.9.2010 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 PASHUPATI HARYANA WOLLEN LTD.
   97 , K.M. STONE DELHI JAIPUR HIGWAY, BAWAI
   DISTT: REWARI [HARYANA]
2. Adv. / Consult SHRI ANIL SHARMA ADV.
   A-100/6 Ist FLOOR, MADHU VIHAR,
   I.P.EXTENTION DELHI-92.
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

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

E/Appeal No.4055/03-SM

(Arising out of order in appeal No.352/AKG/GGN/2003 dated 4.8.2003 passed by the Commissioner of Central Excise (Appeals),

Date of Hearing:6.9.2010

For approval and signature:

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

1. Whether Press Reporters may be allowed to see Under 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? 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, Delhi-I — Appellants

Vs

M/s Pasupati Haryana Woollen Ltd — Respondent

Appeared for the Appellant: Shri Anil Gupta, SDR
Appeared for the Respondent: Shri Anil Sharma, Advocate

Coram: **Hon'ble Shri M. Veeraiyan, Member (Technical)**

Final ORDER - 1021/2010 SM(BR)

Per M. Veeraiyan:

This is an appeal filed by the department against the order of the Commissioner (Appeals) No.352/AKG/GGN/2003 dated 4.8.2003. This appeal is being pursued by the department with the specific permission of the Hon'ble High Court of Punjab and Haryana dated 25.4.2008 in view of the fact that the respondent company stood wound up by order dated 13.8.2004 of the Hon'ble High Court in Civil Petition No. 110 of 1999.

2. Heard the learned SDR for the department.

3. Heard Shri Anil Sharma learned Advocate representing the Official Liquidator.

4. The relevant facts in brief are that the officers visited the premises of respondents on 27.5.1996 and on follow up also visited the premises of M/s Universal Knitwears on 21.6.1996. From the premises of the respondent, 3454.400 kgs of worsted yarn valued at Rs. 11,10,998/- and 1451 kgs of worsted yarn in cross reel hanks valued at Rs. 3,00,708/- were found in excess and seized. 82 bales of woolen and acrylic yarn valued at Rs.8,87,179/- involving Central Excise duty of Rs.1,02,026/- found in the factory premises of M/s Universal Knitwears was seized.

5. In pursuance of show cause notice, the original authority ordered:-

a) confiscation of 3454.400 kgs of seized yarn valued at Rs.11,10,998/- but allowed the same to be redeemed on payment of fine of Rs. 2.5 lakhs;

b) confiscation of 1451 kgs of yarn in cross reel hanks valued at Rs. 3,00,708/- but allowed the same to be redeemed on payment of fine of Rs.75,000/-;

c) confiscation of cross reel hanks yarn valued at Rs. 8,87,179/- seized from M/s Universal Knitwears but allowed the same to be redeemed on payment of fine of Rs. 2 lakhs

d) demand of duty of Rs. 1,02,026/- from the respondent in respect of the goods confiscated.

e) In addition, imposed penalty of Rs. 1 lakh on the respondent and Rs. 1 lakh on M/s Universal Knitwears.

6. On appeal, the Commissioner(Appeals) reduced the redemption fine on 3454.400 kgs of yarn from Rs. 2.5 lakhs to Rs. 1 lakh; he reduced redemption fine on 1451 kgs of cross reel hanks yarn from Rs. 75,000/- to Rs.50,000/-; reduced penalty of Rs. 1 lakh imposed on the respondent to Rs. 50,000/-. The Commissioner (Appeals) has set aside the demand of Rs. 1,02,226/- raised against the respondent in respect of the goods seized from M/s Universal Knitwears.

7. The respondent filed appeal against the order of the Commissioner (Appeals) dated 1.8.2003 and the Tribunal vide final order No. A/751/NB(SM) dated 24.3.2004 in Appeal No. 3235/03-NB reduced the redemption fine on 3454.400 kgs of yarn to Rs.30,000/- and redemption fine on 1451 kgs of cross reel hanks yarn from Rs.50,000/- to Rs.25,000/- and the penalty imposed on respondent from Rs.50,000/- to Rs.30,000/-

8. The appeal of the Department is against the very same order dated 4.8.2003 of the Commissioner (Appeals). The prayer in the appeal is for setting aside the order of the Commissioner (Appeals) and restoring the order of the original authority. The order of the Tribunal on the respondent's appeal has been passed on 24.3.2004;

the company stands wound up by order dated 30.8.2004 of the Hon'ble High Court. In spite of these developments, the department chose to seek continuation of the appeal seeking enhancement of the redemption fines and penalty reduced by the Commissioner (Appeals) to the level imposed by the original authority. Under these circumstances, the question of acceding to the prayer of the department seeking enhancement of redemption fines and penalty to the levels imposed by the original authority does not arise as the order of the Commissioner (Appeals) in this regard got merged with the order of the Tribunal dated 23.4.2004.

9. The other prayer of the department relates to seeking restoration of the order of the original authority in so far as the same relates to confirmation of demand of Rs. 1,02,226/-. The findings of the Commissioner (Appeals) in this regard are as under:-

"It is further seen that 82 bales of woolen and acrylic yarn weighing 3299.900 kgs valued at Rs.8,87,179/- were seized from M/s Universal Knitwears, New Delhi and duty thereon has been demanded from M/s Pasupati Haryana Woollen Ltd. The preventive officers visited M/s Universal Knitwears to verify the type of yarn received from the appellant, and seized the impugned yarn on the belief that the same was liable for confiscation. In the statement of Shri Sudhir Bhatia partner dated 21.6.96, he has not been confronted whether yarn received from the appellants was duty paid or not, even otherwise no document was asked from him for these 82 bales. The demand in respect of this yarn has been confirmed against the appellant only on the basis of statement of Shri Sudhir Bhatia and the

unwritten opinion of some Chartered Engineer who has not been identified. This alone cannot be made a basis of demand as the so called technical opinion was never supplied to the appellant. Thus the demand has been raised only on the basis of assumptions and presumptions. The same does not survive in the eyes of law. The demand of Rs. 1,02,026/- is therefore, set aside."

10. The Commissioner (Appeals) has held that no documents relating to 82 bales of yarn seized from M/s Universal Knitwears was called for from them. No evidence like statement from the respondents has been relied upon regarding duty paid or non-paid nature of goods seized at the end of M/s Universal Knitwears. In absence of evidence that these materials were supplied without payment of duty by the respondents, the question of confirming demand of duty on the respodents in respect of the goods so seized from M/s Universal Knitwears does not arise.

11. In view of the above, I do not find any merit in the appeal by the department. The appeal is, therefore, rejected.

(order dictated and pronounced in the open Court).

(M. VEERAIYAN)
Technical Member

MPS*