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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/1897/2008 – SM[BR] Date 08/10/2010

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

To :
M/S NAHAR FIBRES,
(PROP. NAHAR SPG. MILLS LTD.), VILL. JITWAL
KALAN,TEHSIL MALERKOTLA, SANGRUR.

M/S NAHAR FIBRES, Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1108 / 2010 –SM[BR] dated 30.9.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

   C.C.E. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017

2. Adv. / Consult
   MR.DEEPAK SINHMAR,ADV
   M/S DSK LEGAL(LAW FIRM)46, ARADHANA ENCLAVE(OPP TO HYAAT REGENCY)
   CHANKYA PURI, N.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 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

PRINCIPAL BENCH - COURT NO. 1

EXCISE APPEAL NO. 1897 OF 2008-SM

(Arising out of Order-in-Appeal No. 150/CE/Ldh/08 dated 02.06.2008 passed by the Commissioner (Appeals) Central Excise, Chandigarh).

DATE OF HEARING : 30.09.2010
DATE OF DECISION : 30.09.2010

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT

1.	Whether Press Reporters may be allowed to see the order for publication as per 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

M/s Nahar Fibres .... **Appellants**
(Rep by Sh Rupinder Singh, Adv.)

VERSUS

CCE, Chandigarh .... **Respondent**
(Rep by Sh. R.K. Gupta, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT

Final **ORAL ORDER.** 1108/2010 SM (BR)

PER SHRI JUSTICE R.M.S. KHANDEPARKAR :

Heard both sides.

2 This appeal arises from order dated 02.06.2008 passed by the Commissioner (Appeals), Chandigarh. By the impugned order, the appeal filed by the appellants against the order of the adjudicating authority has been dismissed. The adjudicating authority, namely, Assistant Commissioner of Sangrur, by his order dated 27.11.2007 had ordered recovery of credit of Rs. 1,02,235/- along with interest under Rule 14 of the Cenvat Credit Rules read with Section 11A and Section 11AB of the Central Excise Act, 1944 and had also imposed penalty of equal amount.

3. The appellants are 100% EOU engaged in the manufacture and export of cotton yarn classifiable under Chapter 52 of the Central Excise Tariff Act and they had been availing cenvat credit of the duty paid on capital goods, inputs and the service tax paid on the input services. Under the show cause notice dated 11.04.2007, the appellants were informed that they had availed inadmissible cenvat credit of Rs.1,02,235- on DTA in respect of outward transportation and inward transportation of goods during the period from October, 2006 to December, 2006 and were required to show cause against the recovery thereof. The proceedings in that regard were contested by the appellants. However, the adjudicating authority did not accept the contention sought to be raised on behalf of the appellants and confirmed the demand, as stated above. The appeal carried against the same did not yield fruitful result to the appellants.

4. Placing reliance in the Board Circular No. 97/8/2007-ST dated 23.08.2007 and the decision of the Punjab & Haryana High Court in the matter of **Ambuja Cements Ltd. vs Union of India,** reported in 2009 (236) ELT 431 (P&H) as well as of the Tribunal in the matter of **Bhushan Steels**

Ltd. vs CCE, Ghaziabad, reported in 2009 (243) ELT 239, the learned advocate for the appellants submitted that the authorities below failed to take into consideration the exact nature of the contract between the parties and to apply the Circular to the matter in hand. According to the learned advocate, the invoices *ex facie* disclose that the actual removal of the goods was not at the factory gate, but at the destination of delivery of the goods i.e at Port.

5. On the other hand, the Departmental Representative has reiterated the findings arrived at by the authorities below and has submitted that the same have been arrived at after due consideration of the materials placed on record.

6. It cannot be disputed that neither the decision of the original authority nor that of the lower appellate authority discloses consideration of the Circular dated 23rd August, 2007 while deciding the matter. It is true, as pointed by the Departmental Representative, that the lower appellate authority has held that "the facts of the case reveal that the appellant is manufacturing and clearing the goods from their factory gate for export as well as domestic consumption". The said findings, however, do not disclose which facts of the case which the authority is referring to or has referred to. Once the appeal ~~was being~~ is to be disposed of finally, before arriving at any finding of fact relating to the matter in dispute, it is necessary to refer to the materials on record which would reveal the things to justify the finding to be arrived at and such reference to the materials should be apparent from the order of the adjudicating or appellate authority deciding the matter. The preceding para to the above referred finding nowhere discloses any reference to any material on record. The said finding is preceded merely by reproduction of the summary of the arguments on behalf of the assessee. Obviously, therefore, the Tribunal has no opportunity to know as to what materials on record weighed in the mind of the lower appellate authority to arrive at the finding

which has been arrived at. On this ground itself, in fact, the impugned order is liable to be set aside. That apart, as rightly pointed out by the learned advocate for the appellants, the Board has clearly explained as to how the matters of the nature in hand are to be dealt with. Whenever there is a dispute as to the place of removal of the goods, it is always expected from the authority to refer to the documentary materials placed on record to ascertain the exact place of removal of the goods. Undoubtedly, in the absence of any documentary evidence being placed on record, the authority can refer to other evidence if available on record. However, mere statement to the effect that "the facts of the case" cannot be a justification to arrive at the finding one way or the other, more particularly when the appeal is being disposed of on merits.

7. For the reasons stated above, therefore, the impugned order is quashed and set aside, and the matter is remanded to the adjudicating authority to decide the same afresh in accordance with the provisions of law and bearing in mind the observations made hereinabove. The appeal accordingly stands disposed of.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

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