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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

Appeal No. E/325 /2006-~~328~~ 332 /2006 - EX[DB] Date 07/05/2010

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

To :
M/S RADIANT SILK MILLS PVT.LTD.
G-17 & G-18,RIICO INDUSTRIAL
AREA PUR RAOD BHILWARA
M/S RADIANT SILK MILLS PVT.LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 248-255/ 2010 EX[DB] dated 30-4-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult SH. K.K. ANAND, ADV.,
   A-5, BASEMENT,
   LAJPAT NAGAR-III
   N. 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. 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. Office Copy
14. Guard file
15. SANJAY AGARWAL DIRECTOR
    M/S RADIANT SILK MILLS PVT.LTD.
    G-17 & G-18,RIICO INDUSTRIAL
    AREA PUR RAOD BHILWARA
16. SHYAM KUMAWAT EXPORT EXECUTIVE
    M/S RADIANT SILK MILLS PVT.LTD.
    G-17 & G-18,RIICO INDUSTRIAL
    AREA PUR RAOD BHILWARA
17. M/S SRI GANESH TEX FAB LTD.
    CHITTOR ROAD BHILWARA
18. M/S. A. K. SPINTEX LTD.,
    CHITTOR ROAD, BHILWARA

Assistant Registrar
(Excise Appeal Branch)

P.T.O.-2

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Excise Appeal No.E/325/2006
Excise Appeal No.E/326/2006

Excise Appeal No.E/327/2006
Excise Appeal No.E/328/2006

Excise Appeal No.E/329/2006
Excise Appeal No.E/330/2006

Excise Appeal No.E/331/2006
Excise Appeal No.E/332/2006

(Arising out of Order-in-Appeal No.645(HKS)/CE/JPR-II/2005 and No.646(HKS)/CE/JPR-II/2005 dated 22.11.2005 passed by the CCE & C(A), Jaipur)

Date of Hearing: 27.04.2010
Date of Decision: 27.04.2010

M/s.Radiant Silk Mils Pvt.Ltd.
Shri Sanjay Agarwal, Director
Shri Syam Kumarwat
M/s.Sri Ganesh Tx Fab Ltd.
M/s.Radiant Silk Mills Pvt.Ltd
Shri Syam Kumarwat
Shri Sanjay Agarwal
M/s.A.K.Spintex Ltd.

Appellant

Vs.

CCE, Jaipur-I

Respondent

Present for the Appellant: Shri K.K.Anand, Advocate
Present for the Respondent: Shri Sansar Chand, DR

Coram:

Hon'ble Dr.Chittaranjan Satapathy, Technical Member
Hon'ble Mr. D. N. Panda, Judicial Member

Final **ORDER NO. 248-255/10-EX**

PER: DR.CHITTARANJAN SATAPATHY

Heard both sides. As regards Appeals No.E/326/06 and E/331/06 filed by Shri Sanjay Agarwal are concerned, learned Advocate, Shri K.K.Anand states that the appellant has died on 29.7.2006 and he submits copy of death certificate for the appellant. As such the penalty imposed on the appellant abates. Consequently the two appeals filed by the appellant are dismissed.

2. As regards Appeal No.328/06 and E/332/06, no one appears on behalf of the appellants. There is also no adjournment request.

3. We find in this case that the original authority has dropped the proceedings having come to the conclusion that there is no contravention of the Rules by the appellants. On appeal filed by the department, the lower appellate authority has decided the matter in favour of the department. We find that the lower appellate authority has held a personal hearing on 23.09.2005 when the Advocate appeared on behalf of the appellants (respondents before the lower appellate authority). However, the lower appellate authority appears to have held another hearing on 25.10.2005 when Shri Sumat Jain, Inspector appeared on behalf of the department before him and made detailed submissions. His submissions have been recorded behind the back of the appellants. Even no further opportunity of hearing has been granted to the appellants before passing the impugned order. As such, we find that the impugned order has been passed in gross violation of principles of natural justice.

4. We also find that in this case, the appellants M/s.Radiant Silk Mills had supplied grey fabrics to M/s.Ganesh Tex Fab Ltd. and M/s.A.K.Spintex Ltd. after which the fabrics were to be processed and exported. The Departmental authorities have seized the impugned goods before export has taken place and before any declaration of the value under Section 4 of the Act has been made. It is the allegation of the department that the appellants were going to declare higher value of the goods to claim higher deemed credit. In view of the fact that the seizure has been prematurely done by the department, we find that no offence has been

committed by the appellants and they cannot be penalized on presumption that they would have violated the law subsequently.

5. Under these circumstances, both on the ground of violation of principles of natural justice and on merit, we find that the orders passed by the lower appellate authority are not sustainable. Hence, the impugned orders are set aside and the appeals are allowed. All the six remaining appeals are allowed.

(Dr. CHITTARANJAN SATAPATHY)
TECHNIAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

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