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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/1496/2008 – SM[BR] Date 04/11/2010

Assistant Re
C.E.S.T.A.T, Delhi

To : tra
C.C.E. LUDHIANA

CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA Appellant

Vs

M/S OSWAL WOOLLEN MILLS (U-IV), Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1149 / 2010-SM[BR] dated 12.10.2010 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 OSWAL WOOLLEN MILLS (U-IV),
   G.T.ROAD, SHERPUR,LUDHIANA (PB.)
2. Adv. / Consult SHRI RUPENDER SINGH ADV.
   DSK LEGAL, 46, ARADHANA, CHANAKYAPURI
   NEW DELHI-66.
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,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:12.10.2010

Excise Appeal No. E/1496/08-SM

[Arising out of Order-in-Appeal No.54/CE/LDH/REV/2008 dated 25.03.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh]

For approval and signature:

HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Commissioner, Central Excise, Ludhiana ...Appellant

Vs.

M/s.Oswal Woollen Mills. ... Respondent

Present for the Appellant :Shri.S.K.Bhaskar, DR
Present for the Respondent:Shri.Rupender Singh, ~~DR~~ Adv.

Coram: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

Final **ORDER NO.** 1149/2010 SM(BR) **DATED:12.10.2010**

PER: ASHOK JINDAL

Revenue filed this appeal.

2. In the impugned order the Commissioner (Appeals) has dropped the demand against the respondent relying on the

decision of Madura Coats Pvt. Ltd. vs. CCE reported in 2005 (190) ELT 450, wherein the duty demand was dropped against the respondent holding that duty rightly be paid by the respondent on transaction value, at the time of clearance of the capital goods, which they have used for almost five years in terms of Rule 3(5) of the Central Excise Rules 2004.

3. The ld. DR submitted that the Commissioner (Appeals) has relied on the decision of Madura Coats Pvt. Ltd. (supra) of this Tribunal, which the department has challenged and the same is pending before Hon'ble Madras High Court. Hence, this appeal be kept pending.

4. Heard both sides.

5. Considering the submissions made by the ld. DR, a query has been made to the DR about the status of Madura Coats Pvt. Ltd. before the Hon'ble Madras High Court. In reply to the query, he submitted that no stay has been granted by the Hon'ble High Court and he does not know what is the status and he sought time to find out the status of this appeal before the Hon'ble Madras High Court. Further, I find that in the case of Cumins India Ltd. vs. CCE reported in 2007 (219) ELT 911 (Trib. Mum.), this issue has been dealt by this Tribunal holding that the provisions of Rule 3 (4) of Cenvat Credit Rules 2002 & Rule 3 (5) of Cenvat Credit Rules 2005 are not attractable on removal of the capital goods removed after use and duty has been paid on transaction value. Same view has been confirmed by the Mumbai High Court reported in 2009 (234)

ELT A 120 (Bomb.). Accordingly, I do not find any merit in the Department's appeal and the same is rejected.

[Dictated & Pronounced in the open Court].

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Anita