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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/1113/2005 - EX[DB]

Date 27/10/2010

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

To :
M/S KNIT FOODS PVT. LTD.
POST BOX NO. 28, SULTANPUR ROAD,KAPURTHALA

M/S KNIT FOODS PVT. LTD. Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 745/2010 EX[DB] dated 25-10-10 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
MR.SUDHIR MALHOTRA
13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

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
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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
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16. HON'BLE PRESIDENT.

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. I

Excise Appeal No. 1113 of 2005

[Arising out of the Order-in-Appeal No. 620/CE/JAL/2004 dated 29/12/2004 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 would 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 Department Authorities?	:

M/s Knit Foulds Pvt. Ltd. Appellant

Versus

CCE, Chandigarh Respondent

Appearance

Shri Sudhir Malhotra, Advocate – for the appellant.

Shri B.L. Soni, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 10/06/2010.
DATE OF DECISION : .

Final Order No. 745/10-EX. Dated : 25/10/2010

Per. Rakesh Kumar :-

The Appellant are manufacturer of dressed hides, industrial leather, combing leather, gill box leather, upholstery leather, leather belting, leather goods like leg guards, leather laces, gloves, leather – Nylon sandwich belting, leather nylon condense tapes etc. and also non-leather items like woven fabric belting, synthetic round belting, solution/adhesives, rubber nylon transmission belting etc. The main dispute is about the eligibility of the leather products for duty exemption under exemption Notification No. 115/75-CE. The period of dispute is from June 1980 to May 1981, when the old Central Excise tariff, as it stood during period prior to 28/2/1986, was in force and above-mentioned leather items were covered by Tariff item 68. During the period of dispute, exemption notification No. 115/75-CE dated 30/4/75 exempted from the whole of Central Excise Duty, the "Goods falling under Tariff item 68 and manufactured in the factories covered by the "coir industry", "cashew industry", "Tanning industry", "oil mill and solvent extraction industry" and "Rice milling industry". The point of dispute in this case is as to whether this exemption notification is applicable only to dressed hides and various types of leather or is also applicable to ready to use leather goods and nylon leather belting/tapes. The Assistant Commissioner vide order-in-original dated 10/12/1981 disallowed the exemption for all the items of the Appellant except dressed hides and industrial leather holding that the goods made out of finished leather are not the products of tanning industry and on this basis confirmed duty demand of Rs. 4,54,725/- for the period from 9/6/1980 to 22/5/1981. Assistant Commissioner's order was upheld by CCE (Appeals) vide order-in-appeal dated 14/2/83. On appeal to Tribunal, the Tribunal vide final order No. 1009-1012/87-D dated 28/12/87 held that only the dressed hides and finished leather are covered by the Notification No. 115/75-CE and ready to use finished goods made from leather and composite articles – nylon leather belting/tapes are not eligible for exemption. The Tribunal also held that Appellant's eligibility for Notification No. 80/80-CE and 105/80-CE must be decided after the benefit of exemption Notification No. 115/75-CE is decided Tribunal also held that duty demand can be confirmed only from 9/6/80, the date of issue of show cause notice for denial of exemption under 115/75-CE and 80/80-CE and 105/80-CE. The Tribunal, however, remanded the matter to Assistant Commissioner for denovo adjudication after examining the nature of each finished product of the Appellant in the light of its observations in the order, then decide its eligibility for exemption and thereafter quantifying the duty demand as per its observations.

1.1 In second round of proceedings, the Assistant Commissioner re-adjudicated the matter and vide order-in-original dated 15/5/89 again confirmed the duty demand of Rs. 4,54,725/- holding that all the products cleared by the Appellant were the products manufactured out of finished leather, not eligible for exemption and that during the period of dispute, no tannery items had been cleared. This order of Assistant Commissioner was upheld by CCE (Appeals) vide order-in-appeal dated 24/9/91. On appeal to Tribunal, the Tribunal vide final order No. 714/99-D dated 10/8/99 again remanded the matter to Assistant Commissioner with following directions –

(a) The Assistant Commissioner must again examine the eligibility of each product for exemption under Notification No. 115/75-CE in the light of the Tribunal's observations in order dated 28/12/87.

(b) The Assistant Commissioner will thereafter determine the Appellant's eligibility for benefit of exemption under Notification No. 80/80-CE and 105/80-CE and determine the duty payable w.e.f. 9/6/80.

1.2 In pursuance of the Tribunal's order dated 10/8/99, third round of proceedings started. The Assistant Commissioner vide order-in-original dated 21/7/03 –

(a) confined the exemption under Notification No. 115/75-CE only to dressed hides observing that as per the RT-12 returns for the relevant period, there are no clearances of other tanning items like glove leather, leg guard leather etc. and ;

(b) the Appellant are not eligible for exemption under Notification No. 105/80-CE and 80/80-CE.

He accordingly again confirmed the duty demand of Rs. 4,54,725/- for the period from June 1980 to May 1981.

1.2.1 Appeal against the above order of the Assistant Commissioner was dismissed by CCE (Appeals) vide order-in-appeal dated 30/12/04. It is against this order that the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Sudhir Malhotra, Advocate, the learned Counsel for the Appellant made the following submissions.

(i) The Assistant Commissioner in course of denovo adjudication has not followed the Tribunal's directions. Tribunal in case of **Nylon Laminated Balts Pvt. Ltd. vs. CCE** reported in **1990 (49) E.L.T. – 138** has held that Nylon leather sandwich belting, manufactured in a factory also engaged in tanning, would be eligible for exemption under Notification No. 115/75-CE.

(ii) The Appellant were eligible for SSI exemption under Notification No. 80/80-CE and 105/80-CE as their investment in plant and machinery was less than Rs. 20 lakhs and their clearances during 1979-1980 were less than Rs. 30 lakhs.

(iii) The show cause notice for the period from 9/6/80 to 22/5/81 was issued on 19/9/81 for demand of duty amounting to Rs. 4,54,725/-. The duty could be demanded only prospectively and hence duty demand for the period from 9/6/80 to 16/11/80 is barred by limitation in terms of Hon'ble Supreme Court's judgment in case of **Cotspin Ltd. vs. CCE** reported in **1999 (113) E.L.T. – 353 (S.C.)**.

2.2 Shri B.L. Soni, the learned Departmental Representative, reiterating the findings of CCE (Appeals) in the impugned order emphasised that the Appellant were eligible for exemption under Notification No. 115/75-CE only in respect of dressed hides and finished leather and not in respect of the ready to use leather goods and that the Appellant were not eligible for exemption under Notification No. 105/80-CE or 80/80-CE.

3. We have carefully considered the submissions from both the sides and perused the records.

3.1 The first issue to be decided is the Appellant's eligibility for exemption under Notification No. 115/75-CE. The exemption notification exempts from the whole of the duty of Central Excise the goods falling under Tariff item 68 of the Central Excise Tariff, as it existed during the period prior to 28/2/86 and manufactured in a factory covered by Tanning Industry. This point has been decided by the Tribunal in its detailed order dated 28/12/87 holding that this exemption would be available only to dressed hides and finished leather but would not be applicable to the ready to use finished goods made from leather including leather nylon belting and tape. This judgment was not challenged by the Appellant. Therefore in denovo adjudicating the Assistant Commissioner has rightly confined the exemption only to dressed hides and leather and has denied the exemption to leather products including leather nylon belting. Therefore on this point we do not find any infirmity in the CCE (Appeals)'s order, upholding the Assistant Commissioner's order.

3.2 As regards the Appellant's eligibility for exemption under Notification No. 105/80-CE, this is the SSI exemption for item 68 goods produced in a factory whose investment in plant and machinery did not exceed Rs. 20 lakhs and clearances of item 68 goods during preceding financial year did not exceed Rs. 30 lakhs. Subject to satisfaction of these conditions first clearances of item 68 goods in a financial year starting from 1st April upto aggregate value of Rs. 30 lakhs were fully exempt from duty. As per Explanation II to this Notification, for calculating the value of clearances under this notification, the value of clearances of goods fully exempt from duty under any other exemption notification were not to be included. In this case, the Assistant Commissioner has given a clear finding that after excluding the value of goods fully exempt from duty under Notification No. 115/75-CE, cleared during preceding financial year, the value of goods cleared for home consumption during preceding financial year still exceeded Rs. 30 lakhs and on this ground the benefit of this exemption has been denied. The Appellant have not given any detailed calculation to show as to how the Assistant Commissioner's findings on this point are incorrect.

3.2.1 As regards the Appellants eligibility for Notification No. 80/80-CE, this is the SSI exemption for the goods other than those falling under Tariff item 68. This exemption has been claimed for woven fabric belting, synthetic round belting, solutions/adhesives and rubber nylon Transmission belting. The Assistant Commissioner in the order-in-original has given a clear finding that the aggregate value of clearances for home consumption of all excisable goods during the preceding financial year was more than Rs. 20 lakhs and on this basis the benefit of

Notification 80/80-CE has been denied. The Appellant have not produced any detailed calculation to show as to how this finding of the Assistant Commissioner is wrong.

3.2.2 In view of the above discussion, we do not find any infirmity in the CCE (Appeals)'s order upholding the Assistant Commissioner's order denying the benefit of exemption Notification No. 80/80-CE and 105/80-CE.

3.3 In order dated 28/12/87, the Tribunal while remanding the matter for denovo adjudication had directed that since the show cause notice for denial of exemption Notification No. 115/75-CE had been issued on 9/6/80, the duty can be demanded only for the period from 9/6/80, not for the previous period. In this case, the duty demand is for period from 9/6/80 to 22/5/81. Therefore the Appellant's plea that duty cannot be demanded for the period from 9/6/80 to 16/11/80 is without any basis.

4. In view of the above discussion, we do not find any infirmity in the impugned order. The appeal is dismissed.

(Pronounced in the open court on 25/10/2006

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK