16

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

**REGISTERED / AD**
**Email : delhi@cestat.gov.in**

10

# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**

**CUSTOMS APPEAL BRANCH**

Appeal No. C/256 /2006 - CU[DB] Date **21/03/2011**

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

To :
M/S. YOUNGMAN INDUSTRIES LTD.

1997/1, MAHARAJ NAGAR,
OPP. CIRCUIT HOUSE, LUDHIANA

**M/S. YOUNGMAN INDUSTRIES LTD.** Appellant

Vs

**THE COMMISSIONER OF CUSTOMS** Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/126/ 2011 CU[DB]** dated 09.03.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

**Copy to :**

1. Respondent
**THE COMMISSIONER OF CUSTOMS**
THE MALL, AMRITSAR

2. Adv. / Consult SH. H.O. ARORA, ADV.
B-XIX-810/A, CIVIL LINES,
PRINCE HOSTEL LANE,
LUDHIANA-141 001.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**

**COURT NO. III**

**Date of Hearing : 9.3.2011**

**Custom Appeal No. 256 of 2006**

[Arising out of the Order-in-Original No. 32/Cus/05 dated 28.11.2005 passed by the Commissioner of Customs, Amritsar]

For Approval and signature :

**Hon'ble Mr. S.S. Kang, Vice President**
**Hon'ble Mr. M. Veeraiyan, 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 Youngman Industries Ltd. — Appellant

Vs.

CC, Amritsar — Respondent

**Appearance** :

Appeared for Appellant : Shri L.P. Asthana, Advocate
Appeared for Respondent : Shri K.K. Jaiswal, SDR

**Coram**:
Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. C/126/11 dated 9.3.11

Per S.S. Kang :

Heard both sides.

2. The appellant filed this appeal against the impugned order passed in pursuance to the remand order dated 8.8.2003.

3. The brief facts of the case are that the appellant made import of goods and declared the same as synthetic waste and claimed the classification under Tariff Heading 5505.10 of the Customs Tariff. The consignment contains 264 bales. The classification declared by the appellant was not accepted by the Revenue. Revenue was of the view that the goods in question are not synthetic waste but acrylic tow classifiable under Heading 5501.30 of the Customs Tariff. The goods were examined and 22 bales were cut opened and in eight bales soiled material was found whereas in the four bale tow in running length having negligible defects were found. Six samples were taken from the soil material as well as from the other material. The appellant objected to taking of the sample and subsequently the samples were again taken on 20.11.2001 in the presence of the appellant. Out of these six samples, one sample was sent to CRCL and three samples were sent to the Textile Committee Lab, Mumbai. On receipt of the reports, a Show Cause Notice was issued to the appellant demanding duty after re-classifying the goods under Heading 5501.30 of the Customs Tariff and for imposition of penalties. The adjudicating authority confirmed the demand along with interest and also imposed penalties.

4. The contention of the appellant is that only 22 bales were opened and only six samples were taken and there is report in

respect of only four samples. One sample is examined by the CRCL and report of the CRCL is not definite. The CRCL while giving its opinion make a note to the effect that presence of very small quantity and unusually fused filament indicate that the whole consignment may be carefully examined before finalisation to ascertain the exact nature of goods.

5. The contention of the appellant is that the advice given in the note is not justified. In respect of report by the Textile Committee, the contention is that one sample there is definite opinion that it is waste in respect of two samples, no definite opinion is given. The appellant also submitted that there is no mention in Show Cause Notice regarding examination of remaining two samples which were taken whether the same was sent to expert for their opinion.

6. The contention is that as the samples were taken only from six bales. The result in respect of two samples which according to Revenue is against the appellant cannot be applied to all the 264 bales. Hence, the impugned order is not sustainable.

7. The contention of the Revenue is that the representative samples were taken as 18 bales were found to contain soiled material and remaining bales were of the some kind of other material therefore the represented samples were sent to the chemical examiner and the report of Textile Committee in respect of two samples is in favour of Revenue and report of one sample shows that it is a tow waste. In these circumstances, the contention is that the result of two samples which show that goods

were Acrylic tow and not tow waste. Hence, the impugned order is rightly passed demanding duty by reclassifying the goods in question.

8. We find that in the present case, there are total 264 bales imported by the appellant. Custom authorities only opened 22 bales and on examination of these 22 bales it was found that 18 bales were containing cut and soiled material and remaining four bales containing tow in running length with negligible defects. Total six samples were taken, we find that when there is a variation regarding the composition of the material in the bales when all the bales were not examined by opening the same and samples were not taken from all bales to determine the composition of goods. Further, we find that only six samples were sent for examination. One sample was sent to CRCL and other three samples were sent to Textile Committee Lab, Mumbai and the Show Cause Notice is silent about two other samples. The report of CRCL is not definite as the note given in the report is to the effect that in view of the material contained in the sample the whole consignments is to be carefully examined. This advise by the CRCL is not followed by the Custom authorities. The report of Textile Committee Lab is in respect of three samples taken from three different bales and in respect of two bales we agree with the contention of ld. SDR that it indicates various parameters which shows that the sample is of acrylic or synthetic tow. In respect of third sample, the same is of tow waste which is covered under the heading synthetic waste classifiable under heading 5505.10 of the Tariff. In these circumstances as the

expert opinion is in respect of two samples taken from two bales only which shows that it fulfils the parameters to classify the goods as synthetic filament classifiable under heading 5501 of the Customs Tariff. We find no justification in applying the results test report which is in respect of two bales to all the bales when all the bales were not examined as per the advice of CRCL. Consequently, we find that the Revenue can demand differential duty in respect of only two bales from which the samples were taken which were found to be of tow. The demand of differential duty with consequential penalties in respect of remaining bales i.e. 262 is not sustainable hence set aside and the penalty imposed on the appellant in the impugned order is also set aside. The appeal is disposed of as indicated above.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

RM