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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

CUSTOMS APPEAL BRANCH

Appeal No. C/468 /2006-469 /2006,471 /2006 - CU[DB] Date **28/04/2011**

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

To :
COMMISSIONER OF CUSTOMS, AMRITSAR
CUSTOMS COMMISSIONERATE, AMRITSAR

COMMISSIONER OF CUSTOMS, AMRITSAR Appellant

Vs

M/S. KIRPAL EXPORTS Respondent

I am directed to transmit herewith a certified copy of **Final order No.**C/157-159/ **2011 CU[DB]** dated 15.03.2011 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
   1. **MR. GAURAV KIRPAL,**
   2. **MR. K.N. KIRPAL,**
   3. **M/S. KIRPAL EXPORTS**

   68-D, SARABHA NAGAR,
   LUDHIANA.
2. Adv. / Consult
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
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 - 110005
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 (Harvana)
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)

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

Customs Appeal No.C/468,469 & 471/06

(Arising out of Order-in-Appeal No.90-92/Cus/Appeal/LDH/05 dated 25.10.2006 passed by the CC(A), 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 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?	

CC, Amritsar — Appellants

Vs.

M/s.Kirpal Exports,
Shri K.N.Kirpal,
Shri Gaurav Kirpal — Respondent

Present for the Appellant: request on merits
Present for the Respondent: Shri Sonal Bajaj, SDR

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

Date of Hearing: 15.03.2011
Date of decision: 15.03.2011

Final **ORDER NO.** C/157-159/11

PER: S.S.KANG

The Revenue filed these appeals against the impugned order passed by the Commissioner (Appeals) whereby the demand of duty and penalty were set aside.

2. The brief facts of the case are that M/s.Kirpal Exports, the respondents are engaged in the manufacture and export of woollen garments and obtained advance licence from DGFT under DEEC scheme (quantity based) and made import of duty free mohair tops under Notification No.43/2002 dt.19.4.02. The goods imported duty free are to be used in the manufacture of goods which are to be exported. The investigation was conducted and during investigation, it was found that the goods imported duty free were sold into the DTA. The adjudicating authority after relying on the statement of the respondents as well as of the job workers confirmed the demand and imposed penalties. The Commissioner (Appeals) set aside the order of the adjudicating authority.

3. The contention of the Revenue is that the Commissioner (Appeals) had taken into consideration the statement of only one Shri B.B.Jain and had not taken into consideration the statements made by the partner of the firm whereby the fact regarding sale of imported goods into DTA market was admitted and the respondents also deposited the customs duty on the imported goods amounting to Rs.14,70,186/-. The contention of the Revenue that the statement of the partner of the respondent firm as well as the statement of the job workers clearly show that the imported goods were diverted and are not used for specified purpose. The revenue also submitted that a letter purported to have been written to the office of DGFT bearing key number 98635 whereby the permission was sought for sending the imported raw materials to the job workers. On enquiry, it was found that no such letter was received by DGFT from the respondents. Hence, the impugned order is not sustainable.

4. The respondents submitted that there is no evidence of imported duty free raw materials diverted into DTA and there is no evidence on record also for purchase of indigenous raw materials for the manufacture of goods which are exported. It was also submitted that payments to the job workers were made by banking channels, therefore the impugned order has been rightly passed.

5. We find that the Commissioner (appeals) has taken into account the statement of Shri B.B.Jain, partner of M/s.Gautam Woollen Mills and in his statement he stated that no raw material was received from the respondents for job work. This statement was disbelieved on the ground that an opportunity of cross examination has not been granted. We find that there are other statements including that of the partner of respondent firm which show that the imported goods were diverted into DTA market and the respondents ~~were~~ deposited the amount of Rs.14,70,186/-. As all evidences oral as well documentary have not been taken into consideration while passing the impugned order, the impugned order is not sustainable and hence the same is set aside. The matter is remanded to the Commissioner (Appeals) to decide issue afresh after affording an opportunity of being heard to the respondents. The appeals are allowed by way of remand.

(Pronounced in the open court)

(S.S.KANG)
VICE PRESIDENT

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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