१५/

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

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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

CUSTOMS APPEAL BRANCH

Appeal No. C/495 & 602 /2008 - CU[DB] Date **10/05/2011**

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

To :
M/S KHANNA PAPER MILLS LTD
FATEHGARH CHURIAN ROAD,
AMRITSAR.-143001

M/S KHANNA PAPER MILLS LTD Appellant

Vs

C.C. (PREVENTIVE) AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/185-186/ 2011 CU[DB]** dated 04.05.2011 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
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL
REVENUE BUILDING, THE MALL,
AMRITSAR 143001.

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI-110029

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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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.495 & 602 of 2008

(Arising out of Order-in-Original No.04/Cus/08 dated 4.04.08 and No.06/Cus/08 dated 4.06.08 passed by the CCE, Amritsar)

For approval and signature:
Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
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?	~~No~~ Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	~~No~~ Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	~~No~~ Yes

M/s.Khanna Paper Mills Ltd. Appellant

Vs.

CC, Amritsar Respondent

Present for the Appellant: Shri Madhav Rao, Advocate
Present for the Respondent: Shri Sonal Bajaj, SDR

Coram:Hon'ble Mrs.Archana Wadhawa, Member(Judicial)
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing/Decision: 21.04.2011

Final **ORDER NO.** C/ 185-186/11

PER: M.VEERAIYAN

These two appeals by the same appellants involve identical issue and therefore are being dealt with by this common order.

2. Heard both sides.

3. The appellant exported writing and printing paper in rolls and reels claiming DEPB benefit against entry 459B of DEPB schedule. After exports

were allowed after examination of the goods by the customs authority, the appellants sought for DEPB scrips from DGFT authority which was granted to them. Based on DEPB scrips issued to them the duty free imports have been made. The show cause notices issued alleging that the goods exported by them were not "in cut sizes" and therefore the claim for benefit against entry 459B DEPB schedule has been wrongly claimed and the DEPB scrips were wrongly obtained and used for import of goods duty free and therefore, imported goods were liable for confiscation and that the duty on the imported goods was demandable and penalty imposable. The commissioner confirmed the demand of duty in both cases alongwith interest and imposed penalties. He also held that the goods exported were liable for confiscation and imposed redemption fine in lieu of confiscation. Similarly, he held that the goods imported were liable for confiscation and imposed fine in lieu of confiscation.

4. The gist of the order in the case relating to appeal No.C/495/08 is as follows:-

"ORDER

((i) I hold that the imported goods valued at Rs.22,31,09,560/- are liable to confiscation under Section 111(o) of the Customs Act, 1962. Since the goods are not available, I impose redemption fine of Rs.5,60,00,000/- (Rupees five crore and sixty lacs only) in lieu of confiscation under section 125 of the Customs Act, 1962.

(ii) I confirm demand of Customs Duty of Rs.1,11,55,478/- (Rupees one crore eleven lacs fifty five thousand four hundred and seventy eight only) paid by debits against inadmissible DEPB credits towards payment of Customs duty on import made by notice-I under section 28 of the Customs Act, 1962.

(iii) I demand interest under section 28AB of the Customs Act, 1962 from noticee-I.

(iv) I impose penalty of Rs.1,11,55,478/- (Rupees one crore eleven lacs fifty five thousand four hundred and seventy eight only) on Noticee-I under section 114A of the Customs Act, 1962.

(v) I hold that the goods exported under Shipping Bills as detailed in Annexure 'A' & 'B' of SCN having total declared FOB value, Rs.15,15,20,581/- liable for confiscation under section 113 (i) of Customs Act, 1962. Since the goods are not available, I impose redemption fine of Rs.3,80,00,000/- (Rs.Three crore and eighty lacs only) in lieu of confiscation under section 125 of the Customs Act, 1962.

(vi) I impose penalty of Rs.10,00,000/- (Rs.ten lacs only) on Noticee-I under Section 114 of the Customs Act, 1962 in respect of irregular export fro their cats of omission and commission.

(vii) I refrain from imposing any penalty upon M/s.Superme Freight Forwarders (Nonticee No.2) in view of the discussions as above."

5. The gist of the order in the case relating to appeal No.C/602/08 is as follows:

"ORDER

((i) I hold that the imported goods valued at Rs.8,63,88,460/- are liable to confiscation under Section 111(o) of the Customs Act, 1962. Since the goods are not available, I impose redemption fine of Rs.2,16,00,000/- (Rupees two crore sixteen lacs only) in lieu of confiscation under section 125 of the Customs Act, 1962.

(ii) I confirm demand of Customs Duty of Rs.43,19,423/- (Rupees forty three lacs nineteen thousand four hundred and twenty three only) paid by debits against inadmissible DEPB credits towards payment of Customs duty on imports made by notice-I under section 28 of the Customs Act, 1962.

(iii) I demand interest under section 28AB of the Customs Act, 1962 from noticee-I.

(iv) I impose penalty of Rs.43,19,423/- (Rupees forty three lacs nineteen thousand four hundred and twenty three only) on Noticee-I under section 114A of the Customs Act, 1962.

(v) I hold that the goods exported under Shipping Bills as detailed in Annexure 'B' of SCN having total declared FOB value, Rs.6,73,28,573/-

liable for confiscation under section 113 (i) of Customs Act, 1962. Since the goods are not available, I impose redemption fine of Rs.1,68,00,000/- (Rs.one crore sixty eight lacs only) in lieu of confiscation under section 125 of the Customs Act, 1962.

(vi) I impose penalty of Rs.5,00,000/- (Rs.Five lacs only) on Noticee-I under Section 114 of the Customs Act, 1962 in respect of irregular export fro their cats of omission and commission.

(vii) I refrain from imposing any penalty upon M/s.Superme Freight Forwarders (Nonticee No.2) in view of the discussions as above."

5.1 Learned Advocate for the appellants submits that the goods were exported after correctly declaring the description and claiming the benefit of DEPB under serial non.459B of the schedule and the customs authorities have examined the goods for the correctness of the description as per shipping bills and allowed clearance. Based on assessed shipping bills the appellants claimed the DEPB scrips from the DGFT authorities who after necessary verification issued the scrips. The imports have been made using the DEPB scrips validly issued by DGFT authorities.

5.2 The change of description into "cut into sheets of various sizes" was made in the entry no. 459B only with effect 27.1.06 and based on amendment the export made prior to 27.1.06 cannot be held to be misdeclared.

5.3 The DGFT authorities' clarification to the appellants vide the letter dated 31.8.06 and the DGFT clarifications to the customs authorities vide letter dated 11.12.06 are to the effect that the amendment would be applicable only with effect from 27.1.06 and the goods exported by them reels/rolls prior to 27.1.06 were eligible for the DEPB benefit under serial no. 459B of the DEPB schedule.

5.4 He also submits that the customs authorities cannot question the validity of the DEPB licence. The interpretation on the scope of the DEPB licence is within the jurisdiction of the DGFT authorities only. In support of this contention, learned advocate relies on the decision of the Hon'ble Bombay High Court in the case of Pradip Polyfils Pvt.Ltd. vs. Union of India reported in 2204 (173) ELT 3 (Bom.) and decision in the case of Economics Traders (Guj.) Ltd. and anr. Vs. Union of India reported in 2006 (130) ECR 0418 = 2006 (104) ECC 0418.

6. Learned SDR reiterating the findings and reasoning of the Commissioner, submits that the appellants have exported the paper declaring the products as if they were "cut to sizes" ; the exports documents with such misdeclaration were submitted to DGFT and DEPB scrips were got issued; that using such invalid DEPB scrips fraudulently/wrongly obtained form DGFT, the appellants have imported goods without payment of duty. Therefore, the order of the confiscation of the exported goods and imported goods, demand of the duty on the imported goods and imposition of penalties should be upheld.

7. We have carefully considered from both sides and perused the records. The description of serial no 459B of the DEPB schedule before amendment with effect from 27.1.06 and after amendment reads as follows:

Before amendment:

Paper such as Cyclostyled paper, Typing paper, Zerox paper, Copier paper, Ruled/Unruled paper, Plain paper, Drawing sheets etc. in cut sizes (Emphasis supplied)

After amendment:

Paper such as Cyclostyled paper, Typing paper, Zerox paper, Copier paper, Ruled/Unruled paper, Plain paper, Drawing sheets from prime quality paper cut into sheets of various sizes." (emphasis supplied)

8. The claim of the appellant is that prior to amendment on 27.1.06, the paper exported by them in reels and rolls also satisfied the description under entry 459B of DEPB schedule and that the clarification of the DGFT supports the said view. However, the Commissioner has held that the export have been misdeclared and DEPB scrips have been sought for and obtained fraudulently and imports have been made using invalid DEPB scrips. We are unable to agree with the findings of the Commissioner in this regard. It is not the case of the department that DEPB scrips are forged ones and not issued by the competent DGFT authorities. It is the case of the department that there was misdeclaration at the time of the export and based on misdeclaration contained in the shipping bills DGFT issued DEPB scrips wrongly. If it was felt so, it would have been appropriate that the customs authorities should have taken steps to get the DEPB scrips cancelled by making reference to the DGFT authorities who issued the scrips. Without taking any such action, to say that the DEPB scrips issued by competent authorities are invalid is not proper and legal. It is also not in dispute that the clarification were sought for by the department also and DGFT

have clarified that the exports made by the appellants prior to 27.1.06 were eligible for benefit of DEPB under serial no 459B.

9. The Hon'ble Bombay High court in the case of Pradip Polyfils Pvt.Ltd. cited supra considered the scope of jurisdiction of the customs authorities to question the validity of DEPB licences and held as under:

"We have heard Counsel on both the sides. In this case, it is not in dispute that pursuant to the application made by the petitioners seeking benefit of DEPB Scheme in respect of export of filter plates and accessories made of Polypropylene, two DEPB licences were issued by the DGFT in favour of the petitioners. The endorsement made on the licences clearly show that the DEPB licences have been issued against the export of Polypropylene filter Plates ad accessories as contained in the shipping bills furnished by the petitioners. The said DEPB licences were required to be forwarded to the Customs for verification of the particulars set out in the shipping bills and necessary endorsement thereon. Under Circular No. 15/97 dated 3/6/1997 the verification by the Customs authorities was restricted to the description, quantity and FOB value of the export product set out in the Shipping Bill. It is not the case of the Customs authorities that there is any discrepancy in the description, quantity and FOB value of the export product. Under the circumstances, when the DEPB licence is issued by the Licensing authorities specifically holding that the Petitioners are entitled to avail the benefit of the DEPB Scheme in respect of Polypropylene filter plates and accessories, the Customs authorities were not justified in rejecting the claim of the Petitioners on the ground that the Articles exported by the Petitioners were not covered under Chapter 39 ITC (HS) classification. Whether an item falls under Chapter 39 of ITC classification or not is for the licensing authorities to consider before issuing the licence. Even after the issuance of the licences, the licensing authorities have not taken any steps to declare that the said licences were wrongly issued. Once the licensing authorities have held that the export product is covered under the DEPB Scheme and have issued the DEPB licence, it is not open to the Customs authorities to hold that the said export product is not covered under the DEPB Scheme

and have issued the DEPB licence, it is not open to the Customs authorities to hold that the said export product is not covered under the DEPB Scheme.

10. Similar is the decision of the Hon'ble Gujarat High Court in the case of Economic Traders cited supra.

11. In the facts and circumstances of the case, we are unable to agree with the view taken by the Commissioner that there was misdeclaration while exporting the goods and in getting DEPB scrips. The DEPB scrips have not been got cancelled through DGFT authorities. Further, DGFT authorities have clarified that the DEPB scrips are valid for exports made prior to 27.1.2006. Therefore, we do not agree with the findings of the Commissioner that the scrips are invalid. As valid DEPB scrips have been used for import of the goods, we do not find any reason for demand of duty or confiscation of the goods, or imposition of penalties.

12. In view of the above, the impugned orders are set aside and appeals are allowed with consequential as per law.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

mk