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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/307 /2007 - CU[DB] Date **25/01/2011**

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

To :
M/S AVH ASSOCIATES
D-22/4, OKHLA INDUSTRIAL AREA,PHASE-II NEW DELHI-110020

M/S AVH ASSOCIATES Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No. C47/ 2011 CU[DB]** dated 19.01.11 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. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW DELHI 110020.
2. Adv. / Consult
MR.L.P ASTHANA
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.
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 (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.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 12/01/2011.
DATE OF DECISION : 12/01/2011.

Customs Appeal No. 307 of 2007

[Arising out of the Order-in-Original No. 46/2006 dated 13/11/2006 passed by The Commissioner of Customs, New Delhi.]

For Approval and signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri 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
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	Yes

M/s AVH Associates — Appellants

Versus

CC, New Delhi — Respondent

Appearance

Shri L.P. Asthana, Advocate – for the Appellants.

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

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri M. Veeraiyan, Member (Technical)

Final Order No. C/47/04 Dated : 19.1.04

Per. Archana Wadhwa :-

As per facts on record, the appellant filed DEPB shipping bills for export of made-ups. The officer examining the shipping bills intimated the appellant as under :-

> "Item under export is not covered under heading 89/47 (c) of DEPB Schedule. Shipping bills be amended accordingly."

2. In view of the above, the appellants converted the said DEPB shipping bills into free shipping bills, under intimation to the Deputy Commissioner vide their letter dated nil. Such permission was granted by the proper officer on 5/2/03.

3. The appellant vide their letter dated 12/3/03 also informed the Commissioner of Customs that the shipment under the claim of DEPB scheme is being converted under free shipping bills under protest. They also submitted that they had sought clarification from the DGFT, who vide their letter No. 01/84/58/27/AM01/DES.V/1112 dated 18/09/2000 have clarified that the quilts are also covered by "made-ups". Their subsequent letter dated 19/10/04 addressed to the Deputy Commissioner Customs is to the following effect :-

By-Hand

Ref. No. : AA-931 19/10/2004

The Deputy Commissioner (Customs)
I.C.D. Tughlakabad,
New Delhi.

SUBJECT : FINALISATION OF DEPB ON SHIPPING BILLS NO. 1258946 DT. 01/02/2003 AND 1259229 DT. 03/02/2003.

Dear Sir,

Kindly refer to our export shipments to USA under the following shipping bills :

S. No.	Shipping Bill No.	Date	Our Invoice No.	Date	FOB USD	FOB INR
1.	1258946	01/02/2003	50240	29/01/2003	25,728.00	12,27,225.60
2.	1259229	03/02/2003	50241	29/01/2003	25,728.00	12,27,225.60
				Total	51,456.00	24,54,451.20

These shipments were cleared as a "Free Shipping Bill" UNDER PROTEST, due to difference of opinion between us on applicability/classification of DEPB rates for filled cushions. Please refer our letter dated 12th Feb, 2003 (copy attached).

We sought clarification from the DGFT office in this regard and they have clarified the same vide their letter No. F. No. 01/84/162/988/AM04DESV/585 dated 25/05/2004 (copy attached).

You are requested to kindly allow the finalization of DEPB @ 13% totalling Rs. 3,19,078.00 at the earliest for both the above mentioned shipping bills.

Please let us know if you require anything else from our end.

Thanking you
For AVH ASSOCIATES

Partner

Encl :
1. Copy of letter No. F. No. 01/84/162/988/AM04DESV/585 dated 25/05/04 from DGFT office.
2. Our letter dated 12th Feb., 2003.
3. Copies of our Invoice No. 50240 dt. 29/01/03, 50241 dt. 29/01/03.
4. Copies of our Packing List No. 60106 dt. 29/01/03, 60107 dt. 29/01/03.
5. Copies of Shipping Bill No. 1258946 dated 01/02/2003, 1259229 dated 03/02/2003.

4. Such request of conversion of free shipping bills into DEPB shipping bills stand rejected by the Commissioner vide his impugned order by relying upon the Board Circular No. 6/2003-Cus. dated 28/01/2003. The said order is impugned before us.

5. After hearing both the sides duly represented by Shri L.P. Asthana, Advocate for the appellant and Shri B.L. Soni, SDR for the respondent, we find that the Commissioner, for rejecting the request of the appellant, has observed that the party themselves was not sure about their stand and that is why they send a representation to DGFT. He also observed that the appellant's letter dated 12/2/03 indicating that the shipment should be treated as under protest was after finalisation of the assessment and was not at the time of export. He also observed that at the time of examination of the goods, it was felt that the goods was not covered by DEPB scheme and shipping bills were converted to duty free shipping bills at the request of export/CHA. Accordingly, he held that such conversation cannot be permitted now.

6. We find that the observations of the Commissioner that DEPB shipping bills were converted into duty free shipping bills at the request of the exporter are not correct. We have been shown correspondence between the officers examining the consignment, who had specifically made a note that the goods were not covered under DEPB scheme. It was in these circumstances that the appellant prayed for converting the DEPB bills into free shipping bills. As such it can be safely concluded that such conversation was not at the request of the exporter but at the

behest of the Revenue. The ratio of law in the case of **Smruti Pottery Works vs. CC, Kandla** reported in **2004 (163) E.L.T. 184 (Tri. – Del.)** is fully applicable to the facts of the case.

7. In view of the above, we allow the conversation of the free shipping bills into DEPB shipping bills. However in as much as the appellants DEPB claim has not been examined by the lower authorities, we direct them to do so in the light of the clarification issued by the DGFT authorities.

(Dictated and pronounced in open court.)

(Archana Wadhwa)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

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