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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/164 /2007,177 /2007-178 /2007 - CU[DB] Date **02/06/2011**

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

To :
1. SHRI A.P. KHETAN, DGM (COMMR.)
2. M/S WOOLWORTH (INDIA) LTD.
   NOW KNOWN AS UNIWORTH LTD. (THROUGH COUNSEL SHRI RUPESH KUMAR) PLOT NO 923-945, URLA GROWTH CENTRE, URLA INDL. ESTATE, SARORA, SECTOR D, URLA, RAIPUR

M/S WOOLWORTH (INDIA) LTD. Appellant

Vs

C.C.E. RAPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/227-229/ 2011 CU[DB]** dated 19.05.2011 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.E. RAPUR
CENTRAL EXCISE BUILDING,
DHAMTARI ROAD, TIKRAPARA,
RAIPUR 492001

2. Adv. / Consult
MR.RUPESH KUMAR
46, BANK ENCLAVE, DELHI

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
14. SHRI S.N.MAHESHWARI
    VICE PRESIDENT (COMMR.)
    M/S INDOWRTH LTD.,
    B-130, MIDC, BUTIBORI, NAGPUR

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:19.05.11
Date of decision:19.05.11

Customs Appeal No.164, 177 & 178 of 2007

[Arising out of Order-in-Original No.COMMISSIONER/RPR/07/2007 dated 9.2.2007 passed by the Commissioner of Central Excise & Customs, Chattisgarh].

M/s. Woolworth (India)Ltd. — Appellant

Vs.

CCE, Raipur — Respondent

For approval and signature:

Hon'ble Shri M.V. Ravindran, Member (Judicial)
Hon'ble Shri M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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?	Yes

Appearance: Rep. by Shri Joseph Velapally, Sr. Advocate with
Shri Rupesh Kumar, Advocate for the appellant.
Rep. by Shri Sonal Bajaj, SDR for the respondent.

CORAM: Hon'ble Shri M.V. Ravindran, Member (Judicial)
Hon'sble Shri M.Veeraiyan, Member (Technical)

Final Order NoC/227-229/11/Dated:19.05.2011

Per M.V. Ravindran:

This appeal is directed against the Order-in-Original No.Commissioner/RPR/07/2007 dated 9.2.2007.

2. The brief facts involved in these appeals are that the appellants imported plant for manufacture and export of wool yarn in pursuance of the permission granted to them by DGFT. The entire plant was for installation and use in its Butibori Division. Nagpur, claiming exemption under Notification No.53/97-CE dated 3.6.97. The said machinery was warehoused at their Butibori Division, Nagpur and subsequently, it was shifted to Raipur under the cover of said import documents for installation and use in Raipur Unit.

3. The Investigating authorities visited the premises of the appellant and during the search of the premises, it was noticed that out of the machinery imported, substantial quantity was not installed for manufacture and use, as was permitted to them. On conclusion of the

investigation, show cause notice was issued for demand of the customs duty foregone by the authorities on the plant and machinery, which was not installed. The adjudicating authority after considering the submissions, came to a conclusion that demand of duty has to be confirmed and penalty has to be imposed under various sections of the Customs Act on the appellant company as well as on the employees of the company. Coming to such conclusion, he passed order which is in challenge before us.

4. Learned Sr. Advocate Shri Joseph Velapally brings to our notice the findings recorded by the ld. Commissioner in para 12.14 and 12.15. It is his submission that when the machinery was contracted for purchase, it was for purchase of the plant, which was not used by the supplier in Japan. In order to discharge the customs duty liability, the supplier had given them tentative break up of the value of machinery which was sought to be considered for the demand of duty by the adjudicating authority. He would submit that the order of the ld. Commissioner is without any application of mind. It is his submission that the plant was imported under Notification No.53/97 Cus dated 3.6.97, which did not contain the clause for the installation of the machinery within one year. It is his submission that the said clause was brought into effect from

19.05.99. It is his submission that another glaring error in adjudication order is regarding penalty. It is the submission that penalty was sought to be imposed in show cause notice under Section 140 of the Customs Act, 1962 and the ld. Commissioner has held in his order that the same cannot be imposed on the appellant company, despite such findings, the order imposes penalty under Section 140 of the Customs Act, 1962. It is his submission that the entire export obligation has been completed by the appellant company for the duty foregone by the Revenue authorities. It is his submission that the machinery on which the duty demand is confirmed is still lying in the factory premises.

5. Sr. Advocate also draws our attention to the extension application filed by the appellant to the jurisdictional Dy. Commissioner for extension of time for installation and utilisation of the machinery.

6. Ld. Departmental Representative reiterates the findings of the adjudicating authority.

7. On careful consideration of the submissions made by both the sides, we find that the adjudicating authority has imposed penalty on the appellant company under Section 140 of the Customs Act, 1962 which is

totally incorrect as the said Section deals with prosecution and consequences thereof. We find that the bill of entry was filed claiming benefit of exemption notification No.53/97, which did not have the clause for installation of the machinery within one year. The provisions prevailing during the relevant period needs to be addressed by the adjudicating authority, which is absent in this case.

8. In view of the above we are of the considered view that the impugned order is incorrect, need to be set aside and the matter needs to be reconsidered by the adjudicating authority. Without expressing any opinion on the merits of the case and keeping all the issues open, we set aside the impugned orders and remand the matter back to the adjudicating authority to reconsider the issue afresh after following the principles of natural justice.

9. The appeals are allowed by way of remand.

(M.V. Ravindran)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

Ckp.