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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/482 /2007 - CU[DB] Date **04/07/2011**

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

To :
BHARAT TEXTILE CORPORATION
58/42, BIRHANA ROAD, KANPUR(UP)

BHARAT TEXTILE CORPORATION Appellant

Vs

C.C. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/289/ 2011 CU[DB]** dated 24.06.2011 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult MR. R . SANTHANAM,
C-3/210, JANAKPURI,
NEW DELHI – 110 058.

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 (Harvana)
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
PRINCIPAL BENCH, NEW DELHI
Court No.III

C/Appeal No.482/2007

(Arising out of order in appeal No.169/Cus/Appl/KNP/2007 dated 24.4.07 passed by the Commissioner of Central Excise (Appeals),Kanpur)

Date of Hearing:31.5.2011

For Approval and signature:

Hon'ble Ms Archana Wadhwa, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

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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 Bharat Textile Corporation Appellants

Vs

CCE, Kanpur Respondent

Appeared for the Appellant: None
Appeared for the Respondent: Shri K.K. Jaiswal, SDR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Final ORDER No. C/289/11

Per Mathew John:

The Appellant imported 39200 Kgs of Boric Acid vide Bill of Entry No. 990-Gen dated 04-09-2004 filed at ICD Kanpur. They claimed classification under Tariff Item 28100020 of Customs Tariff. As per Import Policy applicable for this heading goods classifiable under this Tariff Item are freely importable. The department was of the view that this item is classifiable under Tariff Item 38081099 as common insecticide and for import of this item Registration certificate as per provisions of Insecticide Act 1968 is required. The Appellant submitted that the Appellant had applied for the required registration and would be submitting the certificate as soon as they get it. On the basis of this undertaking the Appellant was allowed to clear the goods provisionally by executing provisional release bond along with Bank Guarantee for 15% of the assessable value.

2. Since the Appellant did not produce such certificate even after 18 months a Show Cause Notice for further proceedings was issued. The SCN was adjudicated by the joint Commissioner by holding the goods to be liable to confiscation and imposing redemption fine in lieu of confiscation to the extent of 15% of the assessable value and imposing a penalty of Rs. 1 lakh on the importer under section 112 (a) of the Customs Act. The Appellant filed an appeal with Commissioner (Appeal) without any success. Aggrieved by the said order of the Commissioner (Appeal), this appeal is filed.

3. The Counsel for the Appellant submits that the goods are chemicals in bulk form and is appropriately classifiable under Tariff Item 2810-00-20 of the Customs Tariff as per Chapter note 1 (a) of Chapter 28. They rely on the decision of the Mumbai Bench of the Tribunal in Customs Appeal No. C/884/06 in the case of Chemie Alliance Vs. CC, Nava Sheva Mumbai.

4. The Ld. DR on the other hand points out that this matter has been settled in favour of Revenue by the Apex Court in UOI Vs. Pesticide Manufacturing and Formulation Association of India-2002 (146) ELT 19 (SC) and therefore there is no merit in the Appeal.

5. We have perused the decision of the Apex Court cited above and we find that the matter is no longer res integra.

6. We have also considered the issue whether the redemption fine and penalty imposed is reasonable in the fact and circumstances of the case. In matters like restriction on import of insecticide, restrictions are to be imposed strictly because it affects public health. The decision by the adjudicating authority is linent considering the peculiar history of dispute in classification. But there is no reason to give further relief in the matter.

7. Therefore we dismiss the Appeal.

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)