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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/26 /2008-28 /2008 - CU[DB] Date **19/07/2011**

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

To :
SHRI KRISHNA SINGH GARBYAL[PROPRIETOR OF
M/S KRISHNA ENTERPRISES
GARBYAL KHERA, WARD NO.1, P.O. DHARCHULA,
DIST-PITHORAGARH, UTTARANCHAL

SHRI KRISHNA SINGH GARBYAL[PROPRIETOR OF M/S KRISHNA ENTERPRISES Appellant

Vs

C.C. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/323-325/ 2011 CU[DB]** dated 14.07.2011 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. LUCKNOW
5TH AND 11TH FLOOR, KENDRIYA
BHAWAN, SECTOR -H, ALIGANH,
LUCKNOW 226024.

2. Adv. / Consult
MR.PREM RANJAN KUMAR,ADV
LGF 6/33,VIKRAM VIHAR,
LAJPAT NAGAR PART-IV,
NEW DELHI – 110 024

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
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13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
(Principal Bench)
R.K. Puram, West Block -2, New Delhi – 110 066
CUSTOMS APPEAL BRANCH

Appeal No. : C/26 to 28 of 2008

Arising out of : OIO No. 02/Commissioner/Lucknow/2007 dated 11.10.07

Passed by : Commissioner of Customs, Lucknow.

For approval and signature :

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of 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 Departmental authorities?	Yes

Appellant (s) : **Shri Krishna Singh Garbyal**
Shri Jagdish Chander Gupta
Shri Ajeet Kumar Gupta

Represented by : Shri Prabhat Kumar, Advocate

Respondent (s) : **Commissioner of Customs, Lucknow**

Represented by : Shri Sonal Bajaj, SDR

CORAM :

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Date of Hearing : 26.05.2011

Date of ~~Decision~~ Pronouncement : 14-07-11

Final ORDER No. C/323-325/2011

Per : Mrs. Archana Wadhwa;

All the three appeals are being disposed of by a common order as they are directed against the same impugned order passed by Commissioner.

2. As per facts on records, M/s. Krishna Enterprises, a proprietary concern of Shri Krishna Singh Garbyal, imported two consignment of raw silk from China and filed bills of entry dated 02.09.2005 and 03.10.2005 with the Customs Authorities at Gunji Land Port under the claim of exemption from Customs duty, in terms of Notification No 38/96-Cus dated 23.07.1996. The said notification exempts specified goods including raw ~~silks~~ silk, when imported into India from China through Gunji in Pithoragarh district, through specified Tibet land route. The customs authorities at Gunji, refused to accept the bills of entry compelling the importer to make a representation and the same was subsequently accepted by the intervention of Chief Commissioner of Customs, Patna zone.

3. Inasmuch as the officers felt that the said import of raw materials from China did not ~~appears~~ appear to be a case of border trade between the local residents living either side of the border, as envisaged in the Memorandum of Understanding (MoU for short) dated 13.12.1991, between India and China, Ministry of Finance, telex No. F/554/7/91-MF dated 03.7.1992, ITC public notice No.33/(PN)/92-97 dated 17.07.1992 and clarification issued by Ministry of Commerce, New Delhi vide OM No.

2/9/2005-FT (NEA) dated 02.05.2005 as well as Ministry of Finance letter F.No. 554/02/2005-LC dated 12.08.2005, the same are not eligible for exemption in terms of Notification No 38/96-Cus dated 23.07.1996. Accordingly, the officers seized the said consignments vide Panchnama dated 23.09.2005 and 08.10.2005.

4. Subsequent to the seizure, investigations were conducted and statements of various persons were recorded. Shri Krishna Singh Garbyal, proprietor of M/s. Krishna Enterprises in his statement recorded on 21.10.2005 stated that his firm was established in July 2005 only; that the raw silk was made available to him from Tibet through Shri Ajeet Kumar Gupta, proprietor of one M/s. Elegant Industries; that his job was to manage the import from Tibet to Dharchula; that the sale of the said raw silk was to be managed with the cooperation of M/s. Elegant Industries, Delhi, where a good profit can be earned; that the profit earned in the business was to be shared with M/s. Elegant Industries, Delhi in the ratio of 50:50.

5. Summons were also issued to Shri Ajeet Kumar Gupta, proprietor of M/s. Elegant Industries, who vide his letter dated 22.12.2005 stated that there was no violation of law inasmuch as the only issue to be decided was whether the benefit of duty under Notification No 38/96-Cus dated 23.07.1996, can be extended or not. He also referred to the writ filed by them before the Hon'ble High Court and submitted that as the matter was sub-judiced , he was unable to give further details.

6. Subsequently, the search of the office premises of M/s. Elegant Industries, at Delhi was conducted on 19.05.2006, as also at the residential premises of Shri Ajeet Kumar Gupta was put to search on 19.05.2006. Nothing incriminating was recovered. Subsequently, summons were issued to the said persons on number of occasions and it appears that they did not honour the same. Other details and developments during the course of investigations are not being adverted to as we do not consider them necessary for deciding the disputed issue of availability of exemption notification.

7. On the basis of the investigations, the Revenue entertained a view that Shri Krishna Singh Garbyal, proprietor of M/s. Krishna Enterprises is resident of Dharchula, a town situated at Indo-Nepal border and at a distance of about 80 Kms from the port of import and as such, is not a person living along/ on the side of Indo China border, entitling him to be engaged in the border trade, as envisaged in MoU dated 13.12.1991 between the two countries. The Revenue also entertained a view that M/s. Krishna Enterprises is an ostensible owner of the subject goods and the real owner is M/s. Elegant Industries, who had financed, arranged, procured and purchased the goods from China. The role of M/s. Krishna Enterprises is restricted to be a facilitator for customs clearance at Gunji and further transportation of the goods up to Dharchula. Accordingly, the proceedings were initiated against the appellants by way of issuance of show cause notice dated 13.09.2000, proposing confirmation of demand of customs duty; confiscation of the imported Mulberry raw silk for contravention of the ITC Public Notice No. 33/(PN)/92-97 dated

17.7.1992, issued under Import Export Policy 1992-97, for imposition of penalties upon the appellants in terms of Section 112 and 117 of the Customs Act, 1962. The notice also proposed confiscation of the sale proceeds of the imported goods (which were provisionally released in terms of the Hon'ble High Court order) as also appropriation of the bank guarantee.

8. The said show cause notice culminated into an impugned order passed by Commissioner, vide which he confiscated 440 cartons of raw silk imported on 02.09.1995, with an option to importer Shri Krishna Singh Garbyal, to redeem the same on payment of redemption fine of Rs. Five lakhs. He also ordered for recovery of duty of Rs. 51,24,672/- in respect of the imported goods. As regards second consignment of 720 cartons, imported on 03.10.2005, he confiscated the same with an option to Shri Krishna Singh Garbyal to get the same released on payment of redemption fine of Rs. 7.5 lakhs. He also confirmed duty of Rs. 1,09,08,448/- in respect of the said consignment by denying the benefit of exemption of notification. In addition, penalties of Rs. One lakh each was also imposed on Shri Krishna Singh Garbyal and Shri Jagdish Chander Gupta and Rs. 2.5 Lakhs on Shri Ajeet Kumar Gupta, in terms of the provisions of Section 112 of Customs Act, 1962. Penalty of Rs. 5,000/- was imposed on each of the noticee under Section 117 of the Customs Act, 1962. The said order is impugned before us.

9. After hearing both the sides duly represented by Shri Prabhat Kumar, learned Advocate appearing for the appellants and Shri Sonal

Bajaj, learned SDR appearing for the Revenue, we find that Commissioner has primarily held against the appellants on the ground that Shri Krishna Singh Garbyal is staying at a place about 80 Kms. away from the border, the import made by him cannot be held to ~~a~~ be border trade. He has further held that the said import was made by Shri Krishna Singh Garbyal at the behest of M/s. Elegant Industries, Delhi who are the real owner of the goods. He has also denied the benefit of Notification No 38/96-Cus on the ground that the import is in violation of the provisions of MoU dated 13.12.1991, between India and China and Ministry of Finance telex dated 03.7.1992. He has also referred to ITC Public Notice and clarification issued by Ministry of Commerce as well as by Ministry of Finance.

10. On the other hand, the appellant's contention is that the said MoU was entered into between the two countries and the clarification issued by the Ministries, cannot be held to have any legal sanction, so as to enforce the same. No Rule of law stands enacted for implementation of the said MoU. The notification in question no-where puts any restriction on the import of the goods and there is no such condition attached to the notification, in which case, the same cannot be introduced by the executive and administrative action of the authorities. For the above proposition, reliance stands placed on various decisions of the Tribunal and Courts.

11. After considering the submissions made by both the sides, it is seen that the Commissioner in his impugned order has observed that Shri Krishna Singh Garbyal proprietor of M/s. Krishna Enterprises, is a resident

of village Garbyang, a place said to be situated about 10 to15 Kms away from the Land Customs Station, Gunji and domicile certificate stands issued in his name. However, he has not accepted the claim of Shri Krishna Singh Garbyal to be a local resident, on the ground that bills of entry stands filed in the name of M/s. Krishna Enterprises, Garbyal Khera, Dharchula, District- Pithoragarh and it did not show name of any person or firm of the place Garbyang, as per the domicile certificate. He has also observed that the result of the investigation have revealed that the name of M/s. Krishna Enterprises was used by M/s. Elegant Industries, only to import the goods as border trade. In fact, the entire financial investment was made by M/s. Elegant Industries and the raw silk was to be sold by M/s. Elegant Industries, and M/s. Krishna Enterprises is only a dummy importer. However, we feel that the dispute involved in the present appeal can be resolved without making any reference to the fact as to whether M/s. Krishna Enterprises is the owner of the goods or he is a dummy importer on behalf of the M/s. Elegant Industries and as to whether the import was made as ~~a~~ border trade.

12. Admittedly, the bill of entry stands filed by M/s. Krishna Enterprises. The raw silk imported was duly declared in the bills of entry and the benefit of notification No. 38/96-Cus dated 23.7.1996, which exempts raw silk, when imported into India from China through specified land route, including Gunji land route was claimed. The conditions attached to the said notification, in respect of commodity and route specified therein, stands admittedly fulfilled by the appellants. We have seen the said notification. The same specifies ~~specify the~~ certain goods to be imported from

China through a specified route. Admittedly, raw silk is one of the specified items in the said notification and the Gunji Pulan (Tibet) land route is one of the specified land routes. There is no condition in the said notification referring to the fact that the goods can be imported at the said customs land station only by the persons residing along the border areas. The appellants have strongly contended that no such condition can be introduced in the said notification by the officers. They have relied upon various decisions of the Tribunal as also the Hon'ble Supreme Court in support of their contention that no additional word or meaning can be introduced in the notification and the primary rule of construction requires the notification to be interpreted in its grammatical and ordinary sense without addition or subtraction or substantiation.

13. The Hon'ble Supreme Court in the case of *Tarulata Syam vs. CIT AIR – 1997 SC 1802,* has held that in a taxing Act, one has to look merely at what is clearly said. There is no room for intendment. There is no equity about ~~the~~ tax and no presumption as to ~~the~~ tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

14. In the case of *Hemraj Govardhandass vs. H H Dave - 1978 (ELT) J-350 (SC),* it was held that there is no room for any intendment in a taxing statute and regard has to be given to clear meaning of the words. If a tax payer is within the plain terms of an exemption, he cannot be denied its benefit by calling in any supposed intention of the exempting authority. In a Court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which ~~he~~ it has

chosen to enact either by express~~ed~~ words or by reasonable and necessary implication.

15. In the case of *CCE Jaipur vs. Mewar Bartan Nirman Udyog - 2008 (231) ELT 27 (SC),* it was held that it is well settled position in law that exemption notification has to be read strictly and the same has to be interpreted in terms of its language. Where the language is plain and clear, effect must be given to it.

In fact, the law on the above point is settled and no need is felt to multiply the case law by referring to other similar pronouncements of the Courts.

16. Having observed that there is no such condition in the notification, which stands allegedly contravened by the importer and this fact having been accepted by the Revenue also, we proceed to deal with the objections which have been made the basis for denial of the benefits of notification by the adjudicating authority. The MoU entered into by the two countries is an international obligation and has to be converted into domestic law to operationalize the same. The said MoU is required to result in enactment of law for giving an effect to the same. To deny the benefit of notification, which admittedly does not refer to any border trade, on the basis of the said MoU, without there being any corresponding Act or Notification, is neither justified nor warranted. The notification in question was issued in 1996 i.e. after the MoU was arrived at on 13.12.1991. If the imports through Gunji land route was meant to be only between the residents of

the border areas, the notification could have spelt the same. There being nothing in the said notification, we are very clear that the MoU arrived at between the two countries, cannot be made the basis for denial of benefit of notification in question. The Commissioner has also placed reliance on ITC Public Notice No. 33/92-97 dated 17.7.1992. We have seen the said ITC Public Notice which only gives a list of items allowed to be imported freely on border trade with China. Admittedly, ~~the~~ silk is one of the specified goods. It is contended by the appellants that when the said notice was issued, the import of raw silk was restricted under the trade policy and was allowed only against a license or in accordance with the public notice issued in this behalf. It was in these circumstances that the said public notice was issued so as to allow the import of the raw silk as border trade with China, without a condition of license. However, when the raw silk was imported by the appellants, new Foreign Trade Policy was in place and raw silk was freely importable. As such, he said that ITC Public Notice had become redundant at the material time of import of goods by the appellants. Apart from above, we also note that the border trade stands nowhere defined and the said public notice allowing import of silk under border trade is not a part of notification No. 38/96. As such, in our views, reliance on the said public notice by the Commissioner is erroneous.

17. We also agree with the learned advocate appearing for the appellants that such public notices do not have the sanction of law inasmuch as they are not in the form of any enactment or an order of the Government of India, duly published in the official gazette, as required

under Section 11 of the Customs Act 1962 and Section 3(2) of the Foreign Trade Development and Regulation Act, 1992. The Ministry of Finance, telex F.No. 554/7/91-LC dated 03.7.1992 and Department of Commerce OM No. 2/9/2005-FT (NEA) dated 02/5/2005 and Department of Revenue's letter F.No. 554/02.5005-LC dated 12.08.2005, can at the most reflect upon the intention of the Government but cannot take the place of legislative enactment so as to have the force of law. There being no such condition in the notification itself, the view as expressed in the ~~their own~~ letters cannot take the place of such conditions so as to require the importers to adhere to the same. In the case of *Intercontinental vs. UOI – 2003 (154) ELT 37*, it was observed that if the notification has not provided for any condition, subsequent circular cannot impose such condition as the same would tantamount to re-writing the notification or in other words legislation ~~legislate~~ by circular, which is not permissible in law. Admittedly a notification issued under the provisions of a particular Act require publication in the official gazette as well as requires tabling before both the houses of the Parliament and if that exercise has been carried out without condition being imposed in the notification, it would not be permissible to permit Revenue to impose such conditions by way a circular. The letters of Ministry of Finance and of Commerce relied upon by the Commissioner are internal correspondences between the departmental officers and the same are not a part of the legal enactments. The same cannot be used to curtail the benefits otherwise available to the appellants under the notification. If there was any such intention on the part of the Revenue to impose restriction on border trade, nothing prevented them to introduce such a condition in the notification itself.

18. At this stage we may refer some of the internal correspondence made between the department which stands placed on record by the appellant. In letter a dated 13.09.2005, written by Commissioner of Customs (Preventive), Lucknow to the Joint Secretary, Customs, CBEC, it stands recorded that though there are detailed guidelines provided in the telex dated 03.7.2005 but still ambiguity remain therein, which needs to be clarified. A reference was made to Notification No 38/96-Cus dated 23.6.1996 vide which the exemption of duty of customs and additional duty of customs leviable thereon under Section 3 of the Act was provided. The Commissioner observed that in the said notification the ***nature of trade or any other condition in this regard has not been mentioned***. Absence of any specific requirement should therefore also amount to that all importers irrespective of their place of residence in India, are eligible to import through land customs station (LCS), Gunji. He also expressed his opinion that the Government of India's directions in respect of border trade meant for local ~~residence~~ residents on both the side of border cannot be implemented as such in the absence of any such express mention in the notification. The provisions of MoU of 1991 between India and China are at the most international obligation of India but are not enforceable without being incorporated into domestic legislation like the notification or Foreign Trade Policy. He accordingly, made a request to the Joint Secretary, Customs that the persons eligible to trade through LCS, Gunji should be spelt out clearly in the notification so as to remove the ambiguity whether residency in any particular part of India as condition precedent for importing/ exporting the goods.

19. Reference can be made to another letter dated 10.04.2006 made by the Commissioner of Customs, Lucknow to the Authority of Advance Rulings, which is to the effect that Ministry of Commerce may be requested to issue statutory clarification/ public notices to give strength to the argument that the subject import was not allowed under the MoU so that Notification No 38/96-Cus dated 23.7.1996 is not misused by the importer. Another letter dated 01.09.2005 issued by the Ministry of Commerce is to the effect that in view of the hardships being faced by the importers at Gunji, duty free import of silk through land route from China, should not be discouraged. All these correspondences reflects upon one fact that though the Government's intention in allowing border trade were clear but the same were not incorporated in the notification in question. The Commissioner, Lucknow expressed his apprehensions about the same and also requested the Government to introduce such condition in the notification itself and that having not been done, reliance on such internal correspondence by the adjudicating authority to hold against the appellant, is not appropriate.

19.1 At this stage we may refer to Advance Ruling dated 29.08.2006 given in the case of one Shri Akash Jain. It stands held in the said ruling, while dealing with the scope of notification No. 38/96-Cus dated 23.7.1996, that there is no condition except limiting the import of such goods from China through a specified land customs station and along the specified land routes, for getting the benefit of exemption of duty under notification. It was held that the exemption notification has no actual user condition after the specified goods are imported. As such, the objections of the Commissioner that the silk was not actually imported by M/s. Krishna Enterprises under the proprietorship of Shri Krishna Singh Garbyal but the owner of the same was M/s. Elegant Industries, thus disentitling the importer from claim of the exemption notification, does not carry any weight. The Commissioner has dealt with the said plea of the appellants and has observed that the applicant in that case had sought advance ruling in the following questions :-

(a) Are we allowed to import through these stations in view of Notification No. 63/42?

(b) If we import wool from these station, i.e. Gunji in Uttaranchal or Village Namagla Shipkila in H.P., will we get the benefit of duty free import under Notification No. 38/96?

(c) Is there any limitation under these notifications regarding the actual user of the goods so imported. Means, if we import duty free wool from these station, can be sell the surplus in open market, if so desired?

The Commissioner has thus observed as under:-

"The Authority for Advance Rulings in this case of Mr. Akash Jain has given their ruling in respect of (b) & (c) but dropped the question (a) above considering it not covered in their jurisdiction. The authority of advance ruling in its order have nowhere observed that the conditions/ restrictions imposed by any other law for the time being in force, shall not be applicable, in respect of the goods when imported into India from China through LCS Gunji but has categorically stated that this ruling does not preclude the concerned authorities from verifying/ satisfying themselves as to compliance of requirements under other Acts/ Rules."

19.2 We however, note that the advance ruling in the above case has clearly held that the benefit of notification is available in respect of imports made from China through Gunji route and there is no restriction of the actual user of the goods so imported. Having held that importer has not violated any other condition of the notification, the above ruling by the Advance Rulings Authority, clearly support the appellant's contention. In fact, we note that the Hon'ble High Court of Uttaranchal, in their interim order dated 18.11.2005 passed on the writ petition filed by M/s. Krishna Enterprises, observed that there is no stipulation in the said notification that exemption from excise duty can be claimed only by the traders/ tribals living in the border area, and as such, prima facie there was no justification for the seizure of the goods. Though we agree that these observations were made by the Hon'ble High Court while passing an interim order for release of the seized goods, but such observations support the view which we have already arrived at. As such, we find no reasons to deny the exemption notification in question irrespective ~~to~~ of the fact ~~that as to~~ whether M/s. Krishna Enterprises is the actual importer or imports stands financed by M/s. M/s. Elegant Industries.

20. Though we have held in favour of the assessee on the interpretation of Notification No. 38/96-Cus, we in any case, note that there is no definition of the border trade available anywhere or the distance from the border within which the importer should have been residing. In the absence of the same, the findings of the lower authorities that Shri Krishna Singh Garbyal was not a local resident, cannot be appreciated. Admittedly, the bill of entry was filed by M/s. Krishna Enterprises and as

such he has to be held as importer of raw silk in question. As per domicile certificate produced before the Commissioner, he has been shown a person living along the Indo-China border. He being the proprietor of M/s. Krishna Enterprises, the imports effected ~~affected~~ in the name of M/s. Krishna Enterprises can be safely concluded to be made by the proprietorship concern of Shri Krishna Singh Garbyal, who is resident of the Indo-China border. As such, even otherwise also, we note that the import was made by a person living along the Indo-China border and as such can be safely concluded as a border trade. Further, as per the authority for the advance rulings, there is no restriction on the sale of the goods after import. As such, even if Revenue's allegation as regards the sale of the raw silk by M/s. Krishna Enterprises to M/s. Elegant Industries is accepted to be correct, the same are very much in the legal frame work of ~~the~~ law.

21. We may here deal with the Revenue's allegation of mis-declaration of the Mulberry Raw Silk. It is seen that the appellants had ~~have~~ declared the goods as Mulberry Raw Silk (20/22D - 3A/4A Grade) in both the bills of entry No. 23/05 and 54/05. After seizure, the representative sample of seized raw silk pertaining to both Bill of Entry were sent to Central Silk Technology Research Institute, Bangalore (CSTRI for short) to verify the grades 3A/4A declared by the importers but the same were not taken up for testing by them stating (i) not being truly representative and (ii) also the skeins being found to be entangled/ gummed. The second samples in respect of bill of entry No. 23/05 could not be sent for testing again as the seized goods were provisionally released to M/s. Krishna Enterprises in compliance of the directions of Hon'ble High Court of Uttaranchal.

Subsequently afresh 25 representative samples from each lot (20 cartons or 10 bales i.e. based on each C.I.Q. No.) pertaining to bill of entry No. 54/05 were again drawn and sent to CSTRI for verification of 'grade'. The CSTRI in their report under letter dated 31.3.2006 ~~have~~ reported that out of 36 samples, 3 samples representing three lots viz CIQ No. 2/(i), 2n and 2u were found to be grade 2A. In terms of Notification No. 106/2003 dated 10.07.2003, it attracts anti-dumping duty subject to its landed value being less than US$ 27.97 per Kg as against Grade 3A and 4A declared by M/s. Krishna Enterprises in all documents pertaining to the instant case. The Commissioner has further observed that though the verification of grade of raw silk pertaining to bill of entry No. 23/05 could not be undertaken due to goods released provisionally to the importer but it is evident from the test report of CSTRI in respect of raw silk pertaining to bill of entry No. 54/2005 that the importer has mis-declared the goods in respect of its grade deliberately.

22. The above findings of the Commissioner are being challenged by the appellants on the ground that no anti-dumping duty stands confirmed by him in the order. The charge of mis-declaration of the description of the goods so as to make them confiscable, in terms of Section 111 (m) of the Customs Act, are not sustainable on the ground that it was only a part of the consignment which was held to be of higher grade liable to anti-dumping duty. The samples drawn at the time of seizure were returned by CSTRI on the ground that not being truly representative and also the skeins being found to be entangled/ gummed. The samples were subsequently re-drawn at the back of the appellants and no Panchnama

etc. was drawn at the time of ~~re-drawl~~ redrawing of the said samples. As such, the result of CSTRI, though in respect of two samples, cannot be made applicable.

23. We agree with the above contention of the learned advocate. Our attention has not been drawn by the departmental representative to any Panchnama showing redrawl of the samples, in which case it cannot be conclusively said that the samples were out of the imported consignment of Mulberry Raw Silk. In any case, we find that the grade 2A was found in respect of only two samples, out of the 36 samples sent to CSTRI. The earlier samples, which were drawn at the time of seizure and in the presence of appellant's representatives, were returned back by CSTRI.

24. In any case, we find favour with the appellant's contention that even if part of raw silk imported by the appellants is held to be of grade 2A, even ~~than~~ then no anti-dumping duty is leviable, inasmuch as the Notification No. 106/2003 dated 10.07.2003 levies anti-dumping duty on Mulberry Raw Silk of grade 2A and below, if the landed value of consignment is less than US$ 27.97 per Kg. Admittedly, in the present case the landed value of consignment is US$ 28.18 per Kg. In fact, we find that Commissioner in his impugned order has not confirmed anti-dumping duty against the appellants. In these circumstances, the charge of mis-declaration against the appellants cannot be upheld so as to confiscate the goods, in terms of provisions of Section 111(m) of the Customs Act.

~~24.~~ 25. In view of the forgoing discussions, we find no reasons to uphold the orders passed by Commissioner confirming duties, confiscation of goods and imposing penalties on the appellants. The same is accordingly, set-aside and appeals are allowed with consequential relief to the appellants.

(Pronounced in the Court on 14-07-15)

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

....KL