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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/487 /2007 - CU[DB]

Date **19/07/2011**

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

To :
M/S ORIENT CRAFT LTD.
F-8, OKHLA INDL. AREA,
PHASE-I, NEW DELHI-110020.

M/S ORIENT CRAFT LTD. Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/331/ 2011 CU[DB]** dated 06.07.2011 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.E. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult MR. B. BASU,
C-8D, DDA MIG FLATS, VATIKA APPTS.,
MAYAPURI, NEW DELHI – 110 064.

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 Copv
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI
COURT ROOM NO.III

Appeal No.Cus.Ap.487/2007

(Arising out of the Order-in-Original No.10/KKJ/Adjn/2007 dated 10.05.2007 passed by Commissioner of Central Excise & Customs, (Delhi-IV), New CGO Complex, NH-IV, Faridabad (Haryana).)

For approval and signature of:

SHRI S. S. KANG, HON'BLE VICE PRESIDENT
SHRI MATHEW JOHN, HON'BLE MEMBER (TECHNICAL)

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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 should 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 Departmental Authorities ?	: Yes

M/s.Orient Craft Limited

...APPELLANT

VERSUS

CCE-DELHI-IV

...RESPONDENT

APPEARANCE

Sri A.K.Jain, G.M.(Commercial) & Shri Dinesh Mittal, DGM (Commercial)
FOR APPELLANTS

Sri B.L.Soni, SDR

FOR THE RESPONDENTS

CORAM:

SHRI S. S. KANG, HON'BLE VICE PRESIDENT
SHRI MATHEW JOHN, HON'BLE MEMBER (TECHNICAL)

DATE OF HEARING: 06.07.2011

Final **ORDER NO.** S/331/11

PER SHRI MATHEW JOHN,

1. The Appellant had exported 50% viscose, 45% cotton, blended, knitted ladies blouse and claimed draw back for the products under heading 610602 of the draw back schedule. The relevant entries relating to heading 6106 which are reproduced below:-

6106	Women's or Girls' blouses, shirts and shirtblouses, knitted or crocheted	Qty.	Rate when CENVAT not availed		Rate when CENVAT is availed	
			Rate	Cap per unit	Rate	Cap per unit
610601	Of cotton	piece	6.0%	19	2.5%	8
610602	Of Blend containing Cotton and Man Made Fibre	piece	6.8%	21	2.3%	7.1
610603	Of Man Made Fibres	Piece	7.5%	24	2.0%	6.5
610604	Of Silk (other than containing Noil Silk)	Piece	6.0%	36	3.0%	18
610605	Of Noil Silk	Piece	6.0%	9	3.0%	4.5
610606	Of wool	Piece	6.0%	24	2.5%	10
610607	Of others	Piece	6.0%	19	2.0%	63

2. The contention of Revenue is that the product of the Appellant was made from yarn of cotton and yarn of man-made fibre and was not made by using of yarn in which cotton and man-made fibre was blended at the time of spinning yarn. Therefore Revenue proposed classification of the goods under 610607 which is a residual entry with the description of goods as 'of others'. The original authority held that there was a mis-declaration of the goods inasmuch as the blending was not at the yarn stage. He confiscated the goods under Section 113(h)(ii) of Customs Act,

1962 and imposed redemption fine of Rs.1,00,000/-(Rupees One Lakh Only) for redeeming the goods. He also disallowed draw back of Rs.7,38,755/-(Rupees Seven Lakh Thirty Eight Thousand Seven Hundred and Fifty Five only). A penalty of Rs.50,000/-(Rupees Fifty Thousand only) was imposed under Section 114(iii) of Customs Act, 1962. Aggrieved by the order the Appellant has filed this Appeal.

2. The Appellants submits that the requirement that different types of fibres should be blended at the stage of spinning of yarn is not seen in the relevant entry. It is also argued that basically drawback is for refunding duties of customs and excise paid on raw materials used in the manufacture of export goods and in this matter what is relevant is the percentage of the two types of material used and not the stage at which blending takes place.

3. On the other hand the learned D.R. submits that the word "blending" is always understood to mean blending of fibre before spinning of yarn and blending of yarn at the stage of weaving cannot be called "blending" and the relevant draw back entry has to be interpreted keeping this fact in view.

4. Per contra the Appellant produced extracts from the Complete Textile Encyclopaedia reading as follows :-

> **Blending (of fibres) :** Placing together two or more yarns of different materials (as cotton and wool) in an intimate mixture so that the ultimate value of the fabric can be enhanced by the joint and positive qualities of both or the components of the blend. The

first essential principle in blending is that the components to be blended should have compatible qualities or harmonizing characteristic qualities of each individual fibre. According to this blending of fibres should be so arranged as would enhance the qualities of the blended material over those in the raw or unblended state, and such convenient use of different components should definitely be more adaptable to environments than a single component. Thus, socks made of wool are good and comfortable but are not long-lasting and so now-a-days the parts which suffer maximum wear and tear are reinforced with nylon blends, with a result that such socks definitely have a longer life.

4. Considered the arguments from both sides. From the material placed before us we do not find any reason to conclude that blending of the material should be done before the spinning of yarn for claiming draw back as per item 610601. This interpretation is canvassed by reading extra words into the relevant entry of the Drawback Schedule. While interpreting such entries extra words cannot be read into any such entry. Therefore the Appeal filed by the Appellant is allowed with consequential relief after setting the impugned order.

(Dictated & pronounced in the open Court.)

(S.S. KANG)	(MATHEW JOHN)
VICE PRESIDENT	MEMBER(TECHNICAL)

sm/-