

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/356, 359, 363, 364, 373, 462, 468 /2007 - CU[DB]

Date **05/08/2011**

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

To :
* C.C.E. KANPUR, 117/7,
SARVODAYA NAGAR, KANPUR 208005.
C.C.E. KANPUR

Appellant

Vs
Respondent

M/S ALLIED EXIM

I am directed to transmit herewith a certified copy of **Final order No.C/342-348/ 2011 CU[DB]** dated 02.08.2011
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

M/S ALLIED EXIM
JAJMAU ROAD, KANPUR.

2. Adv. / Consult

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise, I.P. Estate, New Delhi

6. M/s Centax Publications 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

*** SEE REST OF THE ADDRESSES AT BACK.**


Assistant Registrar
(Customs Appeal Branch)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE
TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI
Court No.II**

C /Appeal No.356/2007

(Arising out of order in appeal No.148-150/Cus/Apl/KNP/07 dated
29.3.07 passed by the Commissioner of Central Excise (Appeals),
Kanpur)

For Approval and signature: Date of Hearing: 31.5.2011
Date of Pronouncement: 02-08-11

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? | No |
| 2. Whether it would 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
Department Authorities? | Yes |
-

CCE, Kanpur

Appellants

Vs

M/s Allied Exim

Respondent

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C/Appeal No. 359/07

CCE, Kanpur

Appellants

Vs

M/s Hafeez Sons Tannery Pvt Ltd

Respondent

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

C/Appeal No. 363/07

CCE, Kanpur

Appellants

Vs

M/s Habib Tannery Pvt Ltd

Respondent

Appeared for the Appellant: Shri K.K. Jaiswal, SDR

Appeared for the Respondent: None

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C/Appeal No. 364/07

CCE, Kanpur

Appellants

Vs

M/s Northern Tannery

Respondent

Appeared for the Appellant: Shri Sonal Bajaj, SDR

Appeared for the Respondent: None

C/Appeal No. 373/07

CCE, Kanpur

Appellants

Vs

M/s Diamond Chemicals

Respondent

Appeared for the Appellant: Shri Sonal Bajaj, SDR

Appeared for the Respondent: None

C/Appeal No. 462/07

CCE, Kanpur

Appellants

Vs

M/s Diamond (India) Ltd

Respondent

Appeared for the Appellant: Shri K.K. Jaiswal, SDR

Appeared for the Respondent: None

C/Appeal No. 468/07

CCE, Kanpur

Appellants

Vs

M/s Quality Traders

Respondent

Appeared for the Appellant: Shri Sonal Bajaj, SDR

Appeared for the Respondent: None

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

Final ORDER No. C/342-348/11

Per Archana Wadhwa:

All the appeals of the Revenue (some were heard on 24.5.2011 and some were heard on 31.5.2011) are being disposed of by this common order as the issue involved is identical. The dispute in the present appeals is whether the product imported by the respondent is classifiable as Sulphonated Fish Oil falling under heading 3402.9020 as claimed by the importers or the same is appropriately classifiable under heading 3403.9100 as claimed by the Revenue.

2. Heading 3402.9020 describes the goods as Sulphonated /Sulphonation /Oxidized /Chlorinated Fish Oil. On the other side, heading 3403.9100 describes the goods as preparation of a kind used for the oil or grease treatment of textile materials, leather fuskin and other material. Undisputedly, the fact on record is that all the respondents are tanneries engaged in the manufacture of leather products. The Commissioner (Appeals) has held that in as

much as heading 3402 covers the product specifically by name as Sulphonated Fish oil, the specific entry has to be given as against the general entry. On the other hand, Revenue's contention is that the appellate authority has proceeded on the basis as a product in question admittedly Sulphonated Fish oil. The Chemical Examiner report, which is to the effect "the sample is preparation having Sulphonated Fish oil and additives", the learned DR has contended that in as much as, the same is admittedly a preparation of sulphonated fish oil, the same would find itself existed from heading 3402 and would fall under heading 3403. It also stands contended by the learned DR that the Commissioner has neither considered nor discussed the report of the Chemical Examiner.

3. On going through the order of Commissioner (Appeals), we find that the learned Appellate authority has not considered the above report. The entire order stands passed on the ground that as if the product was admittedly sulphonated fish oil, the impugned order is liable to set aside and remanded to the Commissioner (Appeals) for re-consideration, in the light of the report of the Chemical Examiner. Accordingly, we set aside the impugned order and remand the matter to the Appellate Authority for deciding the classification of the product after taking into account the said report of the Chemical Examiner. We make it clear that we are not expressing any opinion on the classification dispute and the

importers are at liberty to contest the same before the appellate authority. Revenue's appeals are allowed by way of remand.

(Pronounced on 2/8/11) AD
~~(Order dictated and pronounced in the open Court.)~~

(ARCHANA WADHWA)
Member (Judicial)

(MATHEW JOHN)
Technical Member

MPS*