18

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17

# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**

**CUSTOMS APPEAL BRANCH**

Appeal No. C/628 /2010 - CU[DB], C/634-635, 643, 672-673 /2010 - CU[DB] Date **19/09/2011**

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

To :
C.C. ICD, TUGHLAKABAD,
NEW DELHI 110020.

**C.C. (ICD) NEW DELHI** Appellant

Vs

**M/S SUBH RESOURCES PVT LTD. & OTHERS** Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/413-418/ 2011 CU[DB]** dated 14.09.2011 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 SUBH RESOURCES PVT LTD**
6/22, IST FLOOR, W.E.A. KAROL
BAGH, NEW DELHI.

2. Adv. / Consult MR. PIYUSH KUMAR,
B-25, LAJPAT NAGAR-III,
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
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Customs Appeal No.634-635, 643, 672-673 of 2010
C/628/2010
(Arising out of Order-in-Appeal No.CCA/ICD/106/10, No.CCA/ICD/102/10, No.CCA/ICD/100/10 dt.23.08.10, No.CCA/ICD/124/10 and No.CCA/ICD/125/10 dt.24.09.10 passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi)

Date of Hearing/decision: 08.09.2011

For approval and signature:
**Hon'ble Mrs.Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr.Mathew John, Member (Technical)**

| | | |
|---|---|---|
| 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 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 |

CC, New Delhi — Appellant

Vs.

M/s.Shiv Shambhu Enterprises — Respondent
M/s.Rakhi Texstyles
M/s.Singla Apparels Pvt.Ltd.
M/s.Angel Overseas
M/s.Shiv Shambhu Enterprises
M/s.Subh Resources Pvt.Ltd.

Present for the Appellant: Shri A.K.Raha, Sr.Advocate
Present for the Respondent: Shri Piyush Kumar & Shri Pradeep Jain, Advocates

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

Final **ORDER NO.** C/413-418/11

**PER: ARCHANA WADHWA**

Being aggrieved with the order passed by the Commissioner (Appeals), the Revenue has filed the present appeals.

We have heard Shri A.K.Raha, Senior Counsel appearing for the Revenue and Shri Piyush kumar and Shri Pradeep Jain, learned Advocates appearing for the respondents.

2. After hearing both sides, we find that the dispute in the present appeals relates to correct classification of polyester bonded fabrics imported by the respondents. Without going into the details of each and every case, we note that the classification of the same was claimed by the respondents either ~~in the~~ under chapter 54 or ~~in~~ chapter 55. However, on appeal, the Commissioner (Appeals) has accepted the respondents' stand of classification under chapter 59. Hence the present appeals.

3. Apart from the facts that chapter 59 was never one of the contending entry before the original adjudicating authority and as such his views on the same are not available, We also take into account the Board's Circular No.2/2011-Cus dated 4.1.2011 issued subsequent to the passing of the impugned order. The said circular lays down the detailed guidelines for correct classification of the polyester bonded fabrics. It stands clarified in the said circular that the bonded fabric should be classified depending on type of textile material and the nature of bonding as explained in the said circular. Inasmuch as the said circular was neither before the original adjudicating authority nor before the Commissioner (Appeals) and the original adjudicating authority never had the occasion to deal with the importers' claim of classification under chapter 59, We deem

it fit to set aside the impugned order and remand the matter to the original adjudicating authority for de novo decision.

4. We make it clear that we are not expressing any opinion on the merits of the case.

5. Needless to say that the importers would be given an opportunity to present their case and the principles of natural justice would be followed.

6. At this stage, learned Senior Advocate appearing for the respondents submitted that most of the cases are still lying with the Revenue on account of ongoing dispute. As such, they seek instruction for time-bound re-adjudication of the matters.

7. In view of the above request of the importers, we direct the original adjudicating authority to pass the impugned order within a period of six weeks from the date of receipt of the present order.

8. All the appeals are disposed of by way of remand in the above terms.

(Pronounced in the open court)

**(ARCHANA WADHWA)**
**MEMBER (JUDICIAL)**

**(MATAHEW JOHN)**
**MEMBER (TECHNICAL)**

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