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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/37 /2011 - CU[DB], C/COD/17/2011 Date **28/09/2011**

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

To : M/S CHEEMA SPINTEX LTD.
SCO 64-65, 3RD FLOOR,
SECTOR 17-A, CHANDIGARH

M/S CHEEMA SPINTEX LTD. Appellant

Vs

C.C. (ICD) NEW DELHI **MISC. ORDER NO.C/231/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/430/ 2011 CU[DB]** dated 19.09.2011 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
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD,
NEW DELHI 110020.

2. Adv. / Consult
MR.G.S.BHANGOO
H.NO. 5, SECTOR-10A,
CHANDIGARH.

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 26.8.2011

Customs Condonation of Delay No. 17 of 2011 and Appeal No. 37 of 2011

[Arising out letter C. No. VIII/ICD/Exp./Cheema Spintex/113/2010/32337 dated 27.8.2010 passed by the Assistant Commissioner, New Delhi]

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their 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

M/s Cheema Spintex Ltd. — Appellant

Vs.

CC, ICD, New Delhi — Respondent

Appearance:

Appeared for Appellant : Shri Vikarant Kakaria, Advocate
Appeared for Respondent : Shri Sonal Bajaj, SDR

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

Misc order No. C/231/11
Final Order No. C/430/11 dated 19.9.11

Per **Archana Wadhwa** :

After hearing both the sides, we find that the appellant applied for conversion of shipping bill from drawback to DEPB Scheme. The appellant received a letter dated 8.3.2010 from the Assistant Commissioner of Customs, New Delhi intimating that their request for conversion was considered on merits by the competent authority, who has rejected the same. Thereafter, the appellant vide their letter dated 4.6.2010 requested the Commissioner to pass a speaking order in quasi-judicial manner. They also advanced the reason for allowing of their application for conversion of shipping bill.

2. The Assistant Commissioner vide his office letter dated 27.8.2010 intimated the appellant that rejection has already been addressed to them. A copy of the same was again enclosed with the said letter. The present appeal is against rejection of the said request.

3. It is seen that the appellant in stead of filing an appeal against the first rejection intimation vide letter dated 8.3.2010, has filed an appeal against the subsequent letter dated 27.8.2010. According to the appellant, as they had approached the Commissioner with a request to pass a speaking order, they did not challenge the earlier letter for rejection. It is only subsequently when they were intimated by the Assistant Commissioner as rejection stands, they filed an appeal against the subsequent letter. As such, they submitted that the delay in filing appeal, if any, be condoned.

4. Appreciating the above developments, we condone the delay in filing the present appeal and proceed to decide the appeal itself. Admittedly, the rejection was conveyed by the Assistant Commissioner and there is no speaking reasoned order by the Commissioner. When the appellants have applied for conversion of shipping bills from drawback to DEPB Scheme, the Commissioner was under statutory obligation to disclose the reasons for such rejection and to invite the appellants to defend themselves and to pass a speaking order thereafter. This having not been done by the Commissioner, we are of the view that the impugned orders are in violation of the principles of natural justice and required to be set aside on this sole ground itself. Accordingly, we set aside the same and direct the Commissioner to pass well reasoned speaking order. Needless to say that the appellants would have given an opportunity to put forth their case.

5. COD as also appeal get disposed of in the above manner.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

RM