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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/362, 365, 548 /2007 - CU[DB] Date **12/10/2011**

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

M/S PACIFIC LEATHER PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/437-439/ 2011 CU[DB]** dated 04.10.201 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 PACIFIC LEATHER PVT. LTD.
197/189, RAMRAI SARAI, JAJMAU,
KANPUR

2. Adv. / Consult MR. VISHAL, ADV.
C/O. M/S ANAM LEATHER & CHEMICALS INDS.
274/256, DARGAR SHARIF, JAJMAU, KANPUR.

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
14. M/S ANAM LEATHER & CHEMICALS INDS.
274/256, DARGAR SHARIF,
JAJMAU, KANPUR.

Assistant Registrar
(Customs Appeal Branch)

15. M/S SHALIMAR LEATHER INDUSTRIES,
74-A, 150 FT. ROAD, JAJMAU, KANPUR

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

COURT NO. III

DATE OF HEARING : 15/09/2011.
DATE OF DECISION : 15/09/2011.

Customs Appeal No. 362 of 2007

CCE, Kanpur — Appellants

Versus

M/s Pacific Leather (P) Ltd. — Respondent

Customs Appeal No. 365 of 2007

CCE, Kanpur — Appellants

Versus

M/s Anam Leather & Chemicals Industries — Respondent

Customs Appeal No. 548 of 2007

CCE, Kanpur — Appellants

Versus

M/s Shalimar Leather Industries — Respondent

[Arising out of the Order-in-Appeal No. 140, 127 and 138/CUS/APPL/KNP/07 Dated 29/03/2007 all passed by The Commissioner, Central Excise & Service Tax, Kanpur.]

For Approval and signature :

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, 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? :

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities? :

Appearance

Shri Amrish Jain, Authorized Representative (SDR) – for the Appellants.

Shri Vishal, Advocate – for the Respondent.

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

Final Order No. C/437-439/11 Dated : 4.10.11

Per. Rakesh Kumar :-

In all these three cases the respondents imported the product declared to be "Sulphonated Fish Oil Optimalin UPNC" and sought its classification as "Sulphonated Fish Oil" under sub-heading 34029020 of the Customs Tariff. Since the goods were described in the invoice as "Optimalin UPNC", which according to the department is a preparation of Sulphonated Fish Oil meant for fat liquoring of leather, the same would be classifiable under sub-heading 34039100 of the Tariff. The department accordingly sought classification of the goods under sub-heading 34039100 of the Tariff and on this basis demanded differential duty. The Commissioner (Appeals) in these three cases, however, held that the goods imported are "Sulphonated Fish Oil" classifiable under 34029020 and on this basis set aside the order of the original Adjudicating Authority. Against these orders of the Commissioner (Appeals), these three appeals have been filed by the Revenue.

2. Heard both the sides.

3. Both the sides agree that the issue involved in this case is exactly same as the issue involved in the cases of **CCE, Kanpur & others vs. M/s Allied Exim & others** decided vide final order No. C/342-348/2011 dated 2/8/11 by which the Tribunal set aside the order of the Commissioner (Appeals) and had remanded the matter to the Commissioner (Appeals) for deciding the classification of the product after taking into account the report of the chemical examiner. Accordingly, the impugned orders are also set aside and the matters are remanded to the Commissioner (Appeals) for denovo decision of the question of classification and the demand for differential duty after taking into account the report of the chemical examiner.

(Operative part of the order pronounced in the open court.)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK