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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/526 /2005 - EX[DB] & E/1268/2005-EX Date **24/01/2011**

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

To :
C.C.E.LUDHIANA
F-BLOCK RISHI NAGAR LUDHIANA PUNJAB

C.C.E.LUDHIANA Appellant

Vs

M/S ORIENTAL TEXTILE PROCESSING CO.PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 89-90/ 2011 EX[DB]** dated 21-12-10 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S ORIENTAL TEXTILE PROCESSING CO.PVT.LTD. ← 16. SHRI SURINDER KUMAR,
LINK ROAD NEAR SAMRALA
CHOWK LUDHIANA PUNJAB
2. Adv. / Consult
MR.R. SANTHANAM
C-3/210, JANAK PURI, NEW DELHI
- 110 058.
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. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 21.12.2010
Date of decision:21.12.2010

Excise Appeal No.E/526 of with
Cross Objection No.06/2006-Excise

CCE, Ludhiana — Appellant

Vs.

(1) Shri Surinder Kumar, Authorised Signatory of M/s.Oriental Textile Processing Co.Pvt. Ltd. — Respondent

[Arising out of Order-in-Appeal No.621-622/CE/Appl/Ldh/04 dated 26.10.2004 passed by the Commissioner of Central Excise (Appeals), Ludhiana].

Excise Appeal No.E/1268 of 2005-Excise (Branch)

CCE, Ludhiana — Appellant

Vs.

(2)M/s.Oriental Textile Processing Co.Pvt. Ltd. — Respondent

[Arising out of Order-in-Appeal No.678/CE/Appl/Ldh/04 dated 30.12.2004 passed by the Commissioner of Central Excise (Appeals), Ludhiana].

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see 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?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether Order is to be circulated to the Departmental authorities?

Appearance: Rep. by None on behalf of the appellants.
Rep. by Shri Sunil Kumar, DR on behalf of the respondent/Department.

CORAM: **Hon'ble Justice Shri R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Judicial)

FINAL Order No. 89-90/2011-EX/Dated

Per Rakesh Kumar

The facts leading to these two appeals filed by the Revenue are, in brief, as under:-

1.1 The respondents are engaged in the manufacture of processed man made fabrics chargeable to central excise duty under Heading No.55.12 of the Central Excise Tariff. On 26.09.98. The Preventive staff of Central Excise Division-I, Ludhiana intercepted a truck loaded with processed man made fabrics without any duty paying documents/invoice or bill cleared by M/s. Gulab Industries (P) Ltd., Ludhiana and the same were seized. In course of investigation, the staff visited the premises of M/s. Aay Ess Silk Mills, who had supplied the grey fabrics. From the premises of Aay Ess Silk Mills, the officers recovered 42 challans under which grey fabrics had been sent to the processing units for processing. Out of these 42 challans, 29 challans for quantity of 22680.15 mtrs. of grey fabrics pertained to the respondents – M/s. Oriental Textile Processing Co. Ltd., and it appeared that under these challans, the grey fabrics had been sent to the respondent for processing. Inquiry was made with Shri Kulbir Singh, Authorized Signatory of Aay Ess Silk Mills and he stated that 22680.15 Mtrs. of grey fabrics covered under 29 challans had been sent to the respondent's factory for processing and had been received back by them after processing but without any central excise invoices and without payment of duty. However, on inquiry with Shri Surinder Kumar, Authorized Signatory of the Respondent Company, he denied having not received any grey fabrics from M/s. Aay Ess Silk Mills for processing. However, the Department on the basis of the grey fabrics challans pertaining to the respondent company recovered from

M/s. Aay Ess Silk Mills and statement of Shri Kulbir Singh, Authorized Signatory of M/s. Aay Ess Silk Mills, issued a show cause notice to the Respondent Company for recovery of central excise duty amounting to Rs.3,69,686/- along with interest and also for imposition of penalty on them and Shri Surinder Kumar.

The Adjudicating Authority vide order-in-original No.73/CE/JC(Ldh)/2004 dated 3.6.2004 confirmed duty demand of Rs.3,69,686/- along with interest from the respondent company and besides this, imposed penalty of Rs.1 Lakh on Shri Surinder Kumar under Rule 209 A of the Central Excise Rules, 1944. The adjudication order did not impose any penalty on the respondent company. Against the Joint Commissioner's order dated 3.6.2004 confirming the duty demand along with interest, against the respondent and imposing penalty of Rs.1 Lakh on Shri Surinder Kumar, Authorized Signatory of the respondent company, both the respondent company as well as Shri Surinder Kumar filed appeals before the Commissioner (Appeals), which were disposed of by the Commissioner (Appeals) vide Order-in-Appeal No.621-622/CE/Appl/Ldh/04 dated 26.10.2004 by which the Commissioner (Appeals) allowed the appeals on the ground that the Department has failed to adduce any corroborative evidence regarding processing of the fabrics by the respondent and clearing the same to M/s.

Aay Ess Silk Mills without payment of duty and without invoices. Against this order of the Commissioner (Appeals), the Department has filed the appeal No.E/526/05 and the respondent have filed cross objection No.E/CO/06/06-Ex.

2. The Department had also reviewed the Jt. Commissioner's order-in-original 3.6.04 as no penalty has been imposed on the respondent company and accordingly, the review appeal had been filed by the Joint Commissioner before the Commissioner (Appeals). This appeal was disposed of by the Commissioner (Appeals) vide order-in-appeal dated 30.12.2004 by which he dismissed the appeal on the ground that the order of confirmation of duty demand and interest itself has been set aside by the earlier order no.621-622/CE/APPL/LDH/04 dated 26.10.04 and in view of this, there is no ground for imposition of penalty. Against this order of the Commissioner (Appeals), the department has filed Appeal No.E/1268 of 2005.

3. Heard both the sides.

4. Shri Sunil Kumar, ld. Departmental Representative assailed the impugned order reiterating the grounds of appeal and emphasized that the recovery of 29 challans from the premises of M/s. Aay Ess Silk Mills showing dispatch of 22680.15 Metres of grey fabrics to the respondent for

processing and the statement of Shri Kulbir Singh, Authorized Signatory of the Aay Ess Silk Mills confirming this fact and also stating that the processed fabrics had been received from the respondent without any central excise invoices and without payment of duty, is sufficient evidence of processing and clearance of processed fabrics by the respondent and, therefore, the Commissioner (Appeals)'s order setting aside the duty demand and setting aside order of penalty on Shri Surinder Kumar, Authorized Signatory of the respondent is in correct. He also emphasized that since the respondent have clandestinely cleared the processed man made fabrics without payment of duty, penalty under Section 11 AC of the Central Excise Act, 1944 should have been imposed which was not imposed by the Original Adjudicating Authority and the Department's review appeal against the Joint Commissioner's order was wrongly dismissed by the Commissioner (Appeals).

5. None appeared for the respondent though a notice had been served. In view of this in accordance with Rule 21 of the CESTAT (Procedure) Rules, 1983, this case is being decided ex parte, in respect of the Respondents.

6. We have carefully considered the submissions made by the ld. Departmental Representative and have also gone through the memorandum of cross objection filed by the respondents. The entire case against the

respondent is based on recovery of 29 challans from the premises of M/s. Aay Ess Silk Mills which showed sending of 22680.15 Mts. of grey fabrics to the respondents for processing and the statement of Shri Kulbir Singh, Authorized Signatory of M/s.Aay Ess Silk Mills stating that the grey fabrics under those challans had actually been sent to the respondent and therafter had been received back but without any central excise invoices. However, when enquiry was made with Shri Surinder Kumar, Authorized Signatory of the respondent, he denied having received any grey fabrics from M/s. Aay Ess Silk Mills for processing. Other than the inquiry from Shri Kulbir Singh, Authorized Signatory of M/s. Aay Ess Silk Mills, no inquiry has been made with any person of the respondent company and as such, there is no evidence showing the receipt of the grey fabrics claimed to have been dispatched by M/s. Aay Ess Silk Mills to the factory of the respondent company. In our view, just on the basis of recovery from the factory of M/s. Aay Ess Silk Mills, some challans showing the sending of grey fabrics to the respondent for processing and the statement of ~~any~~ an employee of M/s. Aay Ess Silk Mills regarding the receipt of processed fabrics, it cannot concluded that the respondent had processed those fabrics and cleared the same without payment of duty when the respondent's authorized signatory has denied having received any such grey fabrics and there is absolutely no corroborative evidence regarding the receipt of the grey fabrics.

7. In view of this, we are of the view that there is no infirmity in the impugned order. The Revenue's appeals are dismissed. Cross objection filed by the respondent stands disposed of as above.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Ckp.