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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/750 /2006-751 /2006 - EX[DB] Date **24/11/2011**

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

To :
MAHALAKSHMI SPINNERS LTD.
3802-03 BARSAT ROAD, PANIPAT

MAHALAKSHMI SPINNERS LTD. BARSAT ROAD, PANIPAR — Appellant

Vs

C.C.E. ROHTAK — Respondent

I am directed to transmit herewith a certified copy of **Final order No.955-956/ 2011 EX|DB|** dated 16-11-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. ROHTAK
SCO NO,6 SECTOR 1, ROHTAK.

2. Adv. / Consult MS SUPRITI DAS, ADV., B-1/1289-A, VASANTKUNJ, N. DELHI-70
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. MR. M.P. JAIN
3802-03,BARSAT ROAD, PANIPAT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/Appeal No.750-751 / 2006

(Arising out of order in appeal No.415-416/GRM/RTK/05 dated 23.11.2005 passed by the Commissioner of Central Excise (Appeals), Gurgaon)

Date of Hearing: 14.10.2011

1. M/s Mahalaxshmi Spinners Ltd
2. Shri MP Jain

Appellants

Vs

CCE, Rohtak

Respondent

Appeared for the Appellant: Ms. Supriti, Advocate
Appeared for the Respondent: Shri Nitin Pathak, DR

Coram: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

FINAL ORDER No. 955-956/2011-EX

Per Mathew John:

The appellants are manufacturers of cotton yarn falling under Central Excise Tariff No. 5205.11/5205.19 of the First Schedule to the Central Excise Tariff Act, 1985. Cotton yarn in plain reel hanks is for use in Handloom industry and is exempted from excise duty. For Cotton yarn in other forms like corn, cheese, etc. excise duty was payable during the relevant time. Investigation conducted by the Directorate of Central Excise Intelligence showed that the appellants were clearing cotton yarn in cone, cheese etc. but were declaring the goods as cotton yarn in plain reel hanks and not paying excise duty. During investigation the investigating agency recorded statements of various buyers of the impugned yarn and gathered evidence that such goods were actually in cone form. They also collected documents which showed invoices on which the goods were supplied showing the discrepancy in description of goods. Based on such evidences, a show cause notice was issued to the appellants demanding central excise duty of Rs. 1,45,332/- along with interest and also with the proposal for imposing penalty under Section 11AC. The Adjudication of the show cause notice resulted in confirmation of Rs. 1,45,332/- as duty along with interest and imposition of penalty of Rs 1,45,332/- ~~Rs. 332~~/- under section 11AC of the Act. Aggrieved by the order, the appellants filed an appeal with the Commissioner (Appeals). The Commissioner (Appeals) upheld the adjudication order and rejected the appeal.

2. Aggrieved by the order of the Commissioner (Appeals), the appellants have filed this appeal before the Tribunal. The main ground of the appellant is that statement of third party namely buyers of the goods were relied upon for fastening duty liability on the appellants. There is also ground that Commissioner (Appeals) relied upon a diary which even the lower adjudicating authority did not rely upon. Thus the Commissioner (Appeals) has gone beyond the impugned order-in-original. The appellant also stated that cross examination of the third party whose statement was relied upon, was asked before the Commissioner (Appeals) but he did not allow such cross examination and thus the principles of natural justice is violated.

3. The learned DR submits that the main appellant is one of the many parties against whom cases were booked by the Directorate

General of Anti Evasion and investigation conducted to detect removal of cotton yarn without payment of duty during the same period. He points out that the demands confirmed against other parties have been upheld by the Tribunal and there is no difference in facts as compared with other appellants in whose cases the appeals have been rejected. He also submits that the appellant had not asked for cross examination before adjudicating authority but had raised the issue for the first time before the Commissioner (Appeals). He showed that the request is an afterthought and there is no violation of principles of natural justice.

4. We have considered arguments of both sides. We find that there was no request for cross examination during the adjudication stage. The appellants have not been able to produce any evidence that such request was made. Therefore, raising any objection at the stage of first ~~appellant~~ appeal or second ~~appellate stage~~ appeal in this matter deserves no consideration. We do not see any merit in such argument. If the uncontroverted statement of the purchaser of the goods is taken to be correct, the case against the appellants is proved and therefore, we do not want to interfere with the order of the Commissioner (Appeals). Accordingly the appeals are dismissed.

(Order pronounced in the open Court.)

(MATHEW JOHN)
Technical Member
MPS*

(ASHOK JINDAL)
Judicial Member