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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/1472/2005 - EX[DB] Date **12/04/2012**

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

To :
M/S U.P.STATE SPINNING CO.LTD.
MAUNATH BHANJAN DISTT.MAU
275101

M/S U.P.STATE SPINNING CO.LTD. Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/430 2012 EX[DB]** dated 21-2-2012 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 ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.L.P. ASTHANA & MS REENA KHAIR
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

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-3
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
(Excise Appeal Branc

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

E/Appeal Nos. 1472/2005

(Arising out of order in appeal No.11/CE/Alld/2005 dated 14.2.2005 passed by the Commissioner of Customs & Central Excise(Appeals), Allahabad)

Date of Hearing: 21.2.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

1. Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982? Yes

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 lordships wish to see the fair copy of the order? Seen

4. Whether order is to be circulated to the Department Authorities? No

M/s UP State Spinning Co Ltd — Appellants

Vs

CCE, Allahabad — Respondent

Appeared for the Appellant: Ms. Reena Khair, Advocate
Appeared for the Respondent: Shri Nitin Pathak, AR

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

FINAL ORDER No. A/430/2012-EX (BR)

Per Mathew John:

The Appellants were engaged in the manufacture of Cotton and Synthetic yarn. During Feb 2000 to May 2000 they dispatched such yarn to National Handloom Development Corporation Lucknow claiming exemption under Notification No. 5/99-CE dated 28-02-99 (S. No. 94 or S. No. 129) for Feb 2000 and under

Notification No. 6/2000-CE dated 01-03-2000, for March 2000 to May 2000. For claiming the exemption the goods should have been purchased by a registered Apex Handloom Co-operative Society, the National Handloom Development Corporation or Handloom Development Corporation of a State Government and the payment should have been received by cheque drawn by such Co-operative Society or Corporation, as the case may be, on its own bank account. Further condition No. 16 of the Notification should have been satisfied. The said condition read as under:

> "If the manufacturer produces at the time of clearance a certificate from an authorised officer of the Handloom Co-operative Society, National Handloom Development Corporation or State Government Handloom Development Corporation, as the case may be, that the yarn is going to be used only on handlooms."

2. In this case there is no dispute that the substantial conditions have been satisfied. The only objection is that the appellants did not produce the certificate as prescribed in the above notification at the time of clearance of the goods as prescribed in the notification. But the certificate was produced after clearance.

3. The Revenue was of the view that since the required certificate was not produced at the time of clearance the appellants were not eligible for the exemption. On that basis a show cause notice was issued demanding duty with interest and also proposing penalties. In adjudication the said demand has been confirmed with interest and penalty. In the first appeal before the Commissioner (Appeal) the adjudication order has been upheld. Aggrieved by the order the appellants have filed this appeal before the Commissioner (Appeal).

4. The Appellants submit that the Tribunal in their own case in an appeal on the same issue passed final order No.101/05-C dated 12.1.2005 giving the following ruling:

> *"We have heard both sides and gone through the record. So far as the first ground is concerned i.e. the late production of*

the certificate from the NHDC i.e. after the clearances, whereas it was required to be produced at the time or before the clearance, in terms of above said notifications, the same, in our view, is not tangible, in view of the ratio of the law laid down in the case of Rajasthan Rajya Sahakari Spg & Wvg Mills Federation Vs CCE Jaipur reported in 2002 (14) ELT 235 and Bajaj Tempo Ltd Vs CCE Indore reported in 2004 (165) ELT 323. Therefore, the benefit of the above said notifications could not be denied to the appellants on that score."

5. It is the contention of the Appellants that since all the conditions for availing the exemption stand complied, they may be allowed the benefit of the exemption and the impugned order may be set aside.

6. The Ld. A.R. for Revenue relies on the decision of the Apex Court in CCE Vs. Cadilla Laboratories Ltd- 2002 (142) ELT 0279 (SC) and CCE Vs. Deepak Spinners Ltd. ELT-2005 (179) ELT 93 (Tri) and argues that since a condition in the notification has not been complied with as indicated above, the exemption cannot be extended to the appellants.

7. We have considered arguments on both sides.

8. We find that the issue under dispute is decided by the Tribunal in appellants' own case for a previous period. The decision of the Apex Court in the case of Cadilla Laboratories was in the matter of a procedure laid down for ensuring the raw materials used in the manufacture of exempted products were duty paid goods. Compliance with this procedure after manufacture and clearance was not possible. The decision in the case of Deepak Spinners is also on the same issue. The condition involved in this case is of a type where compliance after clearance of goods cannot be fatal to the claim. So we do not find any reason to differ from the earlier order passed by this Tribunal in the case of this appellant in this type of matter.

9. However we notice that the question whether the certificates produced cover the quantities issued, whether it is issued by the proper authority etc have not been verified by the lower authorities because the said authorities have gone by the argument that certificates produced after clearance need not be looked into. So we consider it proper to remit the matter to the lower authority to look into such aspects. It is made clear that the exemption cannot be denied on the ground that certificate was produced after clearance.

10. The appeal is allowed in above terms.

(Pronounced in Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

MPS*