TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2388/2007 - EX[DB] Date **21/03/2012**

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

To :
M/S CHEMMA SPINTEX LTD.
VILL. KOULIMAJRA (LALRU), DISTT. PATIALA

M/S CHEMMA SPINTEX LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/327/ 2012 EX|DB|** dated 29-2-12 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult SH. VIKRANT KACKARIA, ADV, C/O
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-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 Branch)

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

E/Appeal No.2388/2007

(Arising out of order in original No.53/CE/CHD/07 dated 30.5.07 passed by the Commissioner of Customs & Central Excise, Chandigarh)

Date of Hearing: 29.2.2012

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 Cheema Spintex Ltd — Appellants

Vs

CCE, Chandigarh — Respondent

Appeared for the Appellant: Shri Vikrant Kackaria, 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/327/2012-EX (BR)

Per Mathew John:

The Appellants are a Hundred Percent Export Oriented Unit. During 2003-04 they cleared some of their finished goods to domestic tariff Area availing concessional rate of duty under Notification 8/97-CE dated 01-03-97. Such concession was available only for goods valued to the extent of 50% FOB value of

Exports made by the appellants. During 2002-03 appellant had exported goods of FOB value Rs. 4046.78 only. However during 2003-04 they claimed exemption under notification 8/97-CE for goods valued at Rs. 2474.32 crores. Since this amount was in excess of 50% of Rs. 4046.78 crores Revenue felt that the appellants were not eligible for exemption to the extent availed. Based on this reasoning a Show cause Notice demanding duty to the tune of Rs. 1,12,82,956/- was issued. The said SCN is adjudicated confirming the demand along with appropriate interest. Further penalty equal to the said amount is imposed on the appellant under section 11AC of the Act. Aggrieved by the order of the Commissioner, the Appellants have filed this appeal along with an application for waiver of pre-deposit of the duty for admission of the appeal.

2. The Counsel for Appellants submits that the Show Cause Notice was issued pursuant to an audit objection raised by the officers of the Central Excise Revenue Audit and the auditors subsequently dropped the audit objection and therefore there was no reason for the adjudicating authority to confirm the demand. He submits that the adjudicating authority should have dropped the demand since the auditors dropped their objection. The Counsel also submits that the excess clearance by the appellant is appearing because the audit party made calculations considering the financial year as basis and if each quarter is considered as basis for calculating the amount allowed to be cleared to DTA there is no excess clearance.

3. The Ld A. R. for revenue submits that the appellants did not give any reply to the Show Cause Notice except an argument that the officers who conducted the audit dropped the objection. He argues that a Show Cause Notice cannot be decided on the basis of any action of the audit party. He submits that the appellants should have filed reply to the Show cause Notice and appeared for personal hearing. Since the Appellants did not co-operate with the department in deciding the matter after considering the arguments

of the appellants the appellants should be asked to make some pre-deposit to hear the appeal.

4. We have considered arguments on both sides. We are not able to fairly assess the merits of the issue because the adjudication order is passed without a proper reply from the appellants and without giving a personal hearing. We also note that Revenue is not disputing the fact that the Show Cause Notice was issued pursuant to an audit objection and the audit objection has since been closed. So prima facie it appears that the demand is not sustainable.

5. So we consider it proper to waive the requirement of pre-deposit for admission of the appeal. After waiving such requirement we proceed to decide the appeal itself by setting aside the impugned order and remitting the matter for denovo adjudication.

6. The appellant is directed to furnish their reply to the Show Cause Notice explaining the reasons why the demand is not legally sustainable. They are required furnish such reply to the adjudicating authority within 45 days of receipt of this order. Thereafter the adjudicating authority shall decide the matter after giving reasonable opportunity for hearing the appeal. The appellant is directed to co-operate in the matter rather than harping that the audit party has dropped the objection.

7. The Appeal is disposed of accordingly.
(Pronounced in the Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

MPS*