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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/566 /2007 - CU[DB]

Date 16/03/2012

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

To :
M/S PODDAR PIGMENTS LIMITED
E-10,11F-14 TO 16, RIICO INDUSTRIAL AREA,
SITAPURA, JAIPUR

M/S PODDAR PIGMENTS LIMITED Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/A/67/ 2012 CU[DB] dated 22.02.12 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
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.JATIN MAHAJAN,ADV
157, THIRD FLOOR, VINOBHA PURI, LAJPAT NAGAR, N DELHI

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
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

Date of Hearing:22.02.2012
Date of decision:22.02.2012

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member
Hon'bleShri Rakesh Kumar, Technical Member

1.	Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.	Yes
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes.
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes.

Customs Appeal No.566 of 2007

M/s. Poddar Pigments Ltd. ...Appellant

Vs.

CCE, Jaipur-I ...Respondent

(Arising out of Order-in-Appeal No.4(GRM)Cus/Jpr-I/2007 dated 30.03.2007 passed by the Commissioner of Customs (Appeals), Jaipur-I)

Appearance: Rep. by Shri Jatin Mahajan, Advocate for the appellant.
Rep. by Shri R.K. Gupta, DR for the Department.

CORAM: Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

Final Order No.C/A/67/12-Cus./Dated:22.02.12.

Per. D.N. Panda:

Ld. Counsel, Shri Jatin Mahajan says what that was imported was Polyester chip itself although otherwise called as Polybutylene Teraphthalate (BPT). Such BPT is no way different from saturated Polyester. This proposition is based on HSN Clarificatory Notes appearing at page 11 of the paper book filed. He invited attention to the Tariff Entry 390760 which deals with Poly(ethylene Teraphthalate) and submits that main Heading covers this BPT also. He draws our attention to the notification which grants exemption to Polyester Chips which is notification No.28 of 2006-Cus dated 20.03.2006 and is outcome of the Notification No.21/2002-Cus. We have also noticed that the authorities examined the issue in the context of Notification No.28/2006 dated 20.03.2006 as is evident from para-9 of the adjudication order.

2. Shri Mahajan, ld. Advocate also submits that Tariff Entry stated above read with Explanatory Notes leads to the conclusion that the BPT is one of the members of the Polyester family. This being clear, that was recognized by the Notification No.89-Cues dated 1.3.89 and Notification No.45/90-CE (NT) dated 8.11.90. He further invited attention to the Chemical composition of the product which is depicted in page 13 of the paper book. He relies on the certificate dated 11.11.2011 issued by the Central Institute of Plastics

Technology(CIPET) appearing at page 15 of the paper book showing that BPT is one of the kind of polyester. Therefore, his prayer is that BPT Polyester itself is entitled to exemption granted by Notification No.28/2002 dated 20.03.2006. According to him, ld. Appellate Authority should not have concurred with the Adjudicating Authority.

3. Ld. Representative for Revenue submits that PET and BPT are two different goods. HSN classification brings out PET itself is different good although belongs to saturated Polyester category. When the legislature did not intend to grant exemption to BPT , they have not used that term in the earlier Notification No.28/2006-Cus dated 20.03.2006.

4. Heard both sides and perused the records.

5. We inquired from the appellants whether this appellant is making import of questioned goods at present. It is affirmatively answered by the appellant stating that they are still importer of the goods. We surprise how the department has never tested the goods in any of the Government recognized laboratory like CRCL nor obtained any technical report. Rather the report received from CIPET by Appellant indicates that an expert body has opined in favour of appellant.

6. We simply do not find fault with the Revenue for not obtaining any laboratory opinion or technical report. But we find BPT is a member of the Polyester family as per HSN Explanatory Notes. This view is also fortified when Polyester chips is also referring to its

member goods in Notification No.89/89-CE dated 1.3.89 as well as Notification No.40/90-CE (NT) dated 8.11.90. Notification N.28/2006-Cus dated 20.03.2006 exempts polyester chips without specifying other sub-species. Therefore, it cannot be said that BPT does not belong to the Polyester family. When we look into Tariff Entry also, BPT appearing in Entry No.39079150 belongs to the Polyester family itself under the Tariff Entry No.390760. Even the Tariff Entry, "other polyester" appearing under 3907.91 brings within its fold the goods in terms of Tariff Entry 39079920. Therefore, there is no reason to deny the benefit of exemption to the appellant for the reasons stated above. Accordingly, the appeal is allowed.

[order dictated & pronounced in open court]

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Ckp.