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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/474 /2007 - CU[DB] Date **13/04/2012**

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

To :
C.C.E. KANPUR, 117/7,
SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S SULTAN TANNERS Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/A/108/ 2012 CU[DB]** dated 27.03.2012 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
M/S SULTAN TANNERS
JAJMAU ROAD, KANPUR

2. Adv. / Consult MR. AMIT AWASTHI,
H-1, F.F., RADHEY APPTS.,
7/116-A, SWAROOP NAGAR, KANPUR.

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)

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

C
/Appeal No.474/2007

(Arising out of order in appeal No.128-133/Cus/Appl/KNP/07 dated 29.3.07passed by the Commissioner of Central Excise (Appeals), Kanpur)

Date of Hearing: 27.3.2012

For Approval and signature:

Hon'ble Ms. Archana Wadhwa, Judicial Member
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?	No
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?	Yes

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CCE, Kanpur — Appellants

Vs

M/s Sultan Tanners — Respondent

Appeared for the Appellant: Shri K.K. Jaiswal, SDR
Appeared for the Respondent: None

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

FINAL ORDER No. C/A/108/12-Cus

Per Archana Wadhwa:

The dispute in the present appeal is whether the product imported by the respondent is classifiable as Sulphonated Fish Oil falling under heading 3402.9020 as claimed by the importers or the same is appropriately classifiable under heading 3403.9100 as claimed by the Revenue.

2. We find that identical appeals of the Revenue stands remanded. Reference is made to Final Order No. 342-348/2011 dated 2.8.2011. For better appreciation, we reproduce the relevant paragraphs:-

"2. Heading 3402.9020 describes the goods as Sulphonated /Sulphonation /Oxidized /Chlorinated Fish Oil. On the other side, heading 3403.9100 describes the goods as preparation of a kind used for the oil or grease treatment of textile materials, leather fuskin and other material. Undisputedly, the fact on record is that all the respondents are tanneries engaged in the manufacture of leather products. The Commissioner (Appeals) has held that in as much as heading 3402 covers the product specifically by name as Sulphonated Fish oil, the specific entry has to be given as against the general entry. On the other hand, Revenue's contention is that the appellate authority has proceeded on the basis as a product in question admittedly Sulphonated Fish oil. The Chemical Examiner report, which is to the effect "the sample is preparation having Sulphonated Fish oil and additives", the learned DR has contended that in as much as, the same is admittedly a preparation of sulphonated fish oil, the same would find itself existed from heading 3402 and would fall under heading 3403. It also stands contended by the learned DR that the Commissioner has neither considered nor discussed the report of the Chemical Examiner.

3. On going through the order of Commissioner (Appeals), we find that the learned Appellate authority has not considered the above report. The entire order stands passed on the ground that as if the product was admittedly sulphonated fish oil, the impugned order is liable to set aside and remanded to the Commissioner (Appeals) for re-consideration, in the light of the report of the

Chemical Examiner. Accordingly, we set aside the impugned order and remand the matter to the Appellate Authority for deciding the classification of the product after taking into account the said report of the Chemical Examiner. We make it clear that we are not expressing any opinion on the classification dispute and the importers are at liberty to contest the same before the appellate authority. Revenue's appeals are allowed by way of remand."

3. By following the above order, we remand the present appeal also for decision in the light of observations made above.

(ARCHANA WADHWA)
Member (Judicial)

(MATHEW JOHN)
Technical Member

MPS*