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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/91 /2008 - CU[DB], C/CO/86/2012 Date **18/04/2012**

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

To :
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT,
NEW DELHI 110037.

C.C. NEW DELHI (IMPORT & GENERAL) Appellant

Vs

M/S UTTAM SINGH MANOHAR SINGH Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/112/ 2012 CU[DB]** dated 06.03.2012 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 UTTAM SINGH MANOHAR SINGH
6700, FIRST FLOOR KHARI BAOLI,
DELHI.

2. Adv. / Consult
MR.PRAMOD KUMAR RAI & ATHENA LAW ASSOCIATES,
808, L&T FLATS, SEC-18-B, DWARKA,
NEW DELHI-110 075.

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.III

C/Appeal No.91/2008, C/CO 86/2008

(Arising out of Review order No.1/2008 dated 11.1.2008 passed by the Commissioners of Customs (Air Cargo Export/Import & General), New Delhi)

Date of Hearing: 6.3.2012

For Approval and signature:

Hon'ble Mr. S. S. Kang, Vice President
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

CC, New Delhi — Appellants

Vs

M/s Uttam Singh Manohar Singh — Respondent

Appeared for the Appellant: Shri B.L. Soni, DR
Appeared for the Respondent: Shri Kumar Akarsha, Advocate

Coram: **Hon'ble Mr. S. S. Kang, Vice President**
Hon'ble Shri Mathew John, Member (Technical)

Final ORDER No. C/A/112/12-Cus.

Per Mathew John:

During July 2006, the Respondent had imported Saffron and filed a Bill of Entry claiming exemption for the goods under Notification 90/2004-Cus by presenting a DFRC License. The License was issued against export of confectionary items covered under Sr. No. E1 of Standard Input-Output Norms notified by

Commerce Ministry. Items allowed for import under the said license were Flavours/ Essential Oil. The Respondent was claiming saffron to be a flavouring agent for food items.

2. Revenue was of the view that the item imported is too expensive a material to be used in the manufacture of the goods exported and Revenue proposed to deny exemption under Notification 90/2004-Cus. An adjudication order issued denying such benefit was challenged by the Respondent before the Commissioner (Appeal). The Commissioner (Appeal), based on clarification issued by DGFT and other technical opinions, decided that the Respondent is eligible to import saffron under the impugned license and to claim the exemption under the notification. Aggrieved by the order of the Commissioner (Appeal) Revenue has filed this appeal.

3. The Revenue submits that as per Para 4.31 of the Handbook of Procedures (Vol-I) notified by Commerce Ministry, the material imported under DFRC should be of the same quality and technical characteristics and specifications as the material used in the product exported. The clarification in Circular No. 24/2002-Cus was issued with reference to Export-Import Policy 2002-07 whereas the impugned DFRC was issued under Export Import Policy 2004-09.

4. Revenue also relies on the fact in the case of another exporter, namely, M/s Lakhsmi International for export of identical goods the license indicated the classification of goods that could be imported as 33010391. Since saffron falls under a different Tariff Item Revenue contests that there was no intention to allow import of saffron by the present appellant who was also exporting assorted confectionary items.

5. The Revenue also relies on the fact that in Rule 26 of Food Adulteration Rules 1955 saffron is mentioned in the category of

natural colours and it is not mentioned or referred to as a flavouring substance.

6. The Counsel for the Respondent drew our attention to Policy Circular No. 30 (RE-05)/2004-2009 dated 10-10-05 which clarifies that the exporter has the flexibility to import any alternative input fitting into the Standard Input Output Norms (SION) even if exactly the same input has not been used in the manufacture of exported product.

7. The Counsel also submitted a letter addressed by Prof . K. D. Deodhar Department of Chemistry, IIT Mumbai to the Deputy Commissioner of Customs, Customs House Mumbai clarifying that saffron is a natural colouring and flavouring material used as additives in culinary, bakery and confectionary items and sweets and he argues that it is obvious that the license in question can be used for importing saffron. He further points out that Customs Authorities in Mumbai had been allowing import of saffron against such licenses.

8. The Counsel also relies on para 2.2 of Circular No. 24/2002-Cus dated 06-05-2002 issued by CBEC, which reads as under:

> ***"2.2 DFRC Scheme***
>
> *DFRC Scheme was first announced in Exim Policy 2000-2001 with effect from 1-4-2000 DFRC Scheme has been continued in Exim Policy 2002-07 with some minor changes. The earlier DFRC Scheme announced in 2000-01 Exim Policy required that for the purpose of allowing DFRC benefit to imported inputs used in the resultant export product, the quality, technical characteristics and specifications of the inputs under import should be the same as those used in the resultant export product. For this purpose the quality, technical characteristics and specifications of each input used in the resultant export product were required to be specified on the shipping bill and at the time of import Customs was required*

to co-relate it with the input under import so as to allow DFRC benefit to those inputs which were of the same quality, technical characteristic and specifications. Under the new DFRC scheme such co-relation of quality, technical characteristic and specifications has been done away except in the case of items were which are listed in para 4.31 of the Hand book of procedure volume 1 as amended by DGFT/Notice No. 4/2002-07, dated 1-4-2002. In respect of such items customs shall continue to ascertain the quality, technical characteristics and specifications of the inputs under import with reference to the quality, technical characteristics and specifications of the inputs used in the export product as declared on the shipping bill. Quantity of each input shall be permitted in the DFRC license in terms of SION for the relevant export product as earlier. License issued under DFRC scheme are freely transferable as earlier.

Other procedural requirements of DFRC Scheme as specified in DOR's earlier Circular Nos. 33/2000-Cus., dated 2-5-2000 [2000 (118) E.L.T. T27], 42/2000-Cus., dated 2-5-2000 [2000 (118) E.L.T. T20] and 59/2000-Cus., dated 11-5-2000 [2000 (119) E.L.T. T74] shall continue to be followed with the aforesaid modifications.

Customs Notification No. 46/2002-Cus., dated 22-4-2002 has been issued to operationalise this Scheme."

9. Since the goods in question is not one of the items specified in Para 4.31 of the Hand Book of Procedures, the argument of Revenue that the goods imported should be of the same quality and Technical characteristic as the the inputs used in goods exported is not a valid objection.

10. We have considered arguments on both sides.

11. From condition 2 (c) of Notification 46/2002-Cus it is very clear that the need to ensure that the goods imported under a DFRC is of the same technical characteristics, quality and specification as the inputs used in the goods exported applied only to goods specified in para 4.31 of Hand Book of Export Import Procedures. Admittedly saffron is not one such item. That being the case all what is required to be ensured is the goods imported fits into the description, value and quantity of materials specified in the license. We see that no case is made out that such requirements are not met. The Revenue's objection that saffron is a high value item is of no consequence because when the per unit value is high the quantity that can be imported gets restricted on account of the value restriction of the license. Further when the matter stands clarified by both DGFT and CBEC supporting the case made out by the Respondent we do not see any merit in the appeal filed by Revenue.

12. So the appeal filed by Revenue is dismissed and the impugned order is upheld.

13. We find that there is a cross objection filed by the Respondent. This is in the nature of written submissions to support the impugned order and there is no separate relief prayed for. So the cross objection also is disposed of by this order.

(Pronounced in Open Court)

(S.S. Kang)
Vice President

(Mathew John)
Member(Technical)

MPS*