

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH – COURT NO.I

Excise Condonation of Delay Application No.70329 of 2019
(on behalf of the appellant)

**In
Excise Appeal No.70197 of 2019**

(Arising out of Order-in-Appeal No.273,274,275,276 & 277-CE/APPL/LKO/2018 dated 15/05/2018 passed by Commissioner (Appeals), Customs GST & Central Excise, Lucknow)

The Commissioner , CGST &

Central Excise, Lucknow

.....Appellant

(7-A, Ashok Marg, Lucknow-226001)

VERSUS

M/s. Hindustan Industrial Products,

.....Respondent

(N-14, Ancillary Estate, Nadar Ganj Industrial Area,
Amausi, Lucknow)

WITH

Excise Condonation of Delay Application No.70147 of 2019
(on behalf of the appellant)

**In
Excise Appeal No.70198 of 2019**

(Arising out of Order-in-Appeal No.273,274,275,276 & 277-CE/APPL/LKO/2018 dated 15/05/2018 passed by Commissioner (Appeals), Customs GST & Central Excise, Lucknow)

The Commissioner , CGST &

Central Excise, Lucknow

.....Appellant

(7-A, Ashok Marg, Lucknow-226001)

VERSUS

M/s. Indian Perfumers (P) Ltd.,

.....Respondent

(N-14, Ancillary Estate, Nadar Ganj Industrial Area,
Amausi, Lucknow)

APPEARANCE:

Shri Anupam Kumar Tiwari, Advocate for Appellant
Absent

CORAM :

Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)

Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 31 October, 2019
DATE OF DECISION : 31 October, 2019

FINAL ORDER NO.71843-71844/2019

MISCELLANEOUS ORDER NO.70317-70318/2019

PER : ANIL G. SHAKKARWAR

Respondents are absent. We have heard the learned A.R. The present applications are for condonation of delay of 5 days in filing appeal. Since both the appeals are arising out of common impugned Order-In-Appeal, they are taken together for decision. Since the delay is on lower side, after condoning the delay, we have taken up the appeals for final decision. On perusal of record, we note that Revenue is aggrieved by the order of learned Commissioner (Appeals), through which the inputs were allowed to be released. The said inputs were excess found in the premises of the respondent and the learned Commissioner (Appeals) has relied on various decisions of this Tribunal to hold that there are no provisions in Central Excise law to confiscate raw material. For better appreciation we reproduce part of the impugned Order-In-Appeal.

In the case of Kashi Laminators Pvt. Ltd Vs. CCE Lucknow vide Final Order No.A/70434-70438/2017 DB dated 12.04.2017, the Hon'ble Tribunal has held that there are no provision in Central Excise law to confiscate raw material.

Further, in the case of Mohit Rollers P. Ltd. vs. CCE Delhi reported at 2018 (9) GSTL 389 (Tri.Del.), it has been held that Rule 25 of the Central Excise Rules, 2002 is not applicable for confiscation of raw material.

In the case of P & J Aromatics vs. CCE Kanpur, reported at 2017 (357) ELT 490 (Tri-All), also it has been held that raw material cannot be confiscated under Rule 25 of Central Excise, Rules, 2002.

From the above it is quite evident that Rule 25 does not envisage confiscation of raw material. Consequently, there is no ground for imposing penalty under rule 25 or 26 CER. The impugned order is therefore, not sustainable and the same is set aside.

2. Since Revenue could not rely on any such provision through which raw material could be confiscated, we do not interfere with the order of learned Commissioner (Appeals). In addition to the same the penalties were imposed on both the respondents by Original Authority which were set aside by learned Commissioner (Appeals). We note that the penalties so set aside are covered by litigation policy. We, therefore, do not interfere with the impugned Order-In-Appeal and reject both the appeals filed by Revenue.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)