

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

Appeal No. E/4121/2004 and 2880/2004

Date 13/08/2007

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

To: 2. SH. LAL CHAND MOONDRA MGR. & A/S  
1. M/S DINESH POUCHES LTD.  
31, INDL. AREA, JODHPUR (RAJASTHAN)

M/S DINESH POUCHES LTD.

Appellant

C.C.E. JAIPUR I

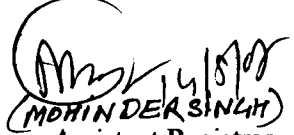
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 439-40/07-EX dated 01-8-07  
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. JAIPUR I  
N.C.R. BUILDING, STATUE CIRCLE, "C" SCHEME,  
JAIPUR 302005.
2. Adv. / Consult SH. O.P. AGRAWAL, CA  
SARDARPURA IST B ROAD,  
JODHPUR
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co. Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

  
Assistant Registrar  
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**West Block No.2, R.K.Puram, New Delhi-110066.**  
**Principal Bench, New Delhi.**

**E/APPEAL NO.4121 & 2880/04**

[Arising out of Order-in-Appeal No.142-43/RM/CE/JPR-II/04  
dt.23.3.04 passed by the Commissioner(Appeals), Jaipur)

For approval and signature:

Hon'ble Mr. C.N.B.NAIR, MEMBER TECHNICAL  
Hon'ble Mr. P.K.DAS, MEMBER JUDICIAL



- 
1. Whether Press Reporters may be allowed to see:  
the Order for publication as per Rule 27 of the  
CESTAT (Procedure) Rules, 1982?
  2. Whether it would be released under Rule 27 of :  
the CESTAT (Procedure) Rules, 1982 for  
publication in any authoritative report or not?
  3. Whether their Lordships wish to see the fair :  
copy of the order?
  4. Whether order is to be circulated to the :  
Department Authorities:

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M/s. Dinesh Pouches Ltd.

Appellant

Versus

CCE, Jaipur

Respondent

Appearance

Sh. O.P.Agrawal, C.A. For Appellant

Sh. V.K.Agrawal, Authorised Representative(DR)For Respondent

Coram: Hon'ble Mr. C.N.B.NAIR, MEMBER TECHNICAL  
Hon'ble Mr. P.K.DAS, MEMBER JUDICIAL

Date of decision: 1.8.07  
*Rina* Order No. 439 - 440/2007 EX

Per C.N.B.Nair:

The appellant is a manufacture of Pan Masala and Gutka which were liable to Central Excise Duty on advalorem basis. The appellant was selling its products both on ex-factory basis and consignment basis. It assessed all clearances taking the ex-factory price as the assessable value.

2. A SCN dt.29.11.01 was issued alleging that, on account of change in the legal provisions relating to "place or removal", w.e.f. 29.9.06, the goods sold from the C&F agents' premises were required to discharge duty based on the sale price at the C&F agents' premises. The notice alleged that, for the period 29.9.06 to 28.2.97, there was a short payment of duty of about Rs.1.3 lakhs. The notice proposed to recover the duty short levy under proviso to Section 11A of the Central Excise Act. It also proposed imposition of penalties.

3. The appellant contested the demand on merits as well as on the ground of limitation. The contention on merit was that the quantification of duty has been done incorrectly in-as-much as a relief was not given towards freight from the factory to the consignment agents' premises (b) value was not taken as cum-duty (c) all sales from C&F agents' premises were not taken into account. The submission of the Ld. Counsel is that if the



valuation and computation is carried out correctly, there would be an excess payment of about Rs.30,000/-.

4. The appellant's contention in regard to limitation was that assessments during the relevant period was a continuation of the valuation practice of earlier time and that the appellant was not aware of the change of law. Thus, there was intention to evade payment of duty and therefore, proviso to Section 11A is not applicable.

5. The above contentions were rejected by the adjudicating authority as well as first appellate authority. Both of them also recorded that the appellant had not produced sale invoices to support the contentions. The present appeal is directed against those orders.

6. Heard both sides and perused the record.

7. It is to be seen from the appellant's reply dt.3.1.02 to SCN that the appellant had filed copies of all the invoices. It had also filed a detailed chart showing freight element. Thus, the findings of lower authorities, though ~~con~~<sup>are</sup> contrary to record. There is also no apparent error in the computation claimed by the appellant. Therefore, the appellant's contention about payment of duty in excess of what was due is not baseless.

8. The contention in regard to limitation is to be examined in the above factual situation. If the appellant was only continuing a practice of assessment and that practice caused no major loss of revenue as alleged, it is to be accepted that the error in valuation did not flow from intention to

evade payment of duty. Therefore, we find no justification for a finding that there was intention on the part of the appellant to evade duty. In fact, from the data presented by the appellant, it would appear that there was no evasion of duty at all and that the notice was the result of inadequate and improper consideration of relevant facts and law.

9. In view of what is stated above, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, to the appellant.

Order dictated in the open Court.

SD

SD

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~~Senior Technical~~