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

Appeal No. E/3818/2006-3821/2006 Date 04/04/2008

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

To :
M/S RAJASTHAN EXPLOSIVE AND CHEMICAL LTD
MOCHKUND. DHOLPUR. RAJASTHAN.

M/S RAJASTHAN EXPLOSIVE AND CHEMICAL LTD Appellant
Vs
C.C.E.JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 120-23/08** **2008 Excise** dated 19-3-08 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
   NCRB. STATUE CIRCLE. C-SCHEME. JAIPUR.
2. Adv. / Consult
   MR.P.C.JAIN
   332, ARAVALI APARTMENTS. ALAKNANDA, NEW DELHI-19
3. &D.R.
4. ~~J.C.(Excise)~~
5. Bar association. CESTAT. New Delhi
6. M/s. Deeparchi Publications, M-93. marg. 43, saket. New
7. M/s Centax Publictions (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)

P.T.O.

1 RAJESH JAIN
C/O RAJASTHAN EXPLOSIVE & CHEMICAL LTD. MOCHKUND. DHOLPUR(RAJ)
2 B.D.AGARWAL
C/O RAJASTHAN EXPLOSIVE & CHEMICALS LTD. MOCHKUND, DHOLPUR(RAJ)
3 A.K.JAIN
C/O RAJASTHAN EXPLOSIVE & CHEMICALS LTD. MOCHKUND. DHOLPUR(RAJ)

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

E/3818-21/06

[Arising out of Order-in-Original No.46/2006 dt.29.8.06 passed by the Commissioner of Central Excise, Jaipur)

For approval and signature:

Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. B.S.V.MURTHY, MEMBER TECHNICAL

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:	:

M/S. Rajasthan Explosive and Chemicals Ltd.
And Others — Appellant

Versus

CCE, Jaipur — Respondent

Appearance

Sh. P.C.Jain, Adv. For Appellant

Sh. H.K.Thakur, Authorised Representative(JCDR) For Respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. B.S.VMURTHY, MEMBER TECHNICAL

Final Date of decision: 19.3.08
Order No. 120-23/08-Ex

Per S.S.Kang:

Heard both sides. The present impugned order has passed in pursuance to the remand order dt.15.4.02 passed by the Tribunal. The Tribunal held as under:

> "As far as Appeals against impugned order No.36/2000 dt.3.11.2000, is concerned, we find substance in the submission of Shri P.C.Jain, learned Advocate, that the impugned Order is a non-speaking one as the Adjudicating Authority has not recorded any findings on his own. He has merely mentioned that as his predecessor, after carefully examining each and every aspect of the case had confirmed the demand and imposed penalties and no new facts had emerged before him, he finds no "reason to interfere with the order passed by my predecessor". The Order No.2/99 passed by his predecessor had been remanded by the Appellate Tribunal vide Final Order No.A/837-40/99-NB dt.25.8.99. The Adjudicating Authority has to pass an Order which is speaking and well reasoned one. As no findings are contained in the present impugned Order No.36/2000, we are constrained to remand the same to the Adjudicating Authority with the directions to re-adjudicate the matter afresh".

2. The main contention of the appellant is that the present impugned order passed in violation to the principles of natural justice. The contention is that the case of the revenue is that certain incentive sheets showing more production than reflected in R.G.I were recovered from Shri M.L.Agarwal, Dy. General Manager and revenue recorded the statements of various persons to show that the appellants were producing the goods and clearing the same without payment of duty. The contention is that before the adjudicating authority the appellant asked for cross examination of S/Shri

Ganesh Mathur, G.C.Bahugunal and Mahesh Sharma whose statements were relied upon by the adjudicating authority. The contention is that the opportunity to cross examine the above witnesses were denied only on the ground that there was no direction given by the Tribunal in the remand order. The contention is that the Tribunal remanded the matter to the adjudicating authority to decide afresh as the impugned order was not speaking order. It is also submitted that all the contentions raised by the appellant were not taken into consideration in passing the impugned order.

3. In reply to this argument the contention of the Revenue is that in addition to the statement recorded during investigation showing higher production. There was other evidence also which shows that the appellants were producing goods which are not reflected in the statutory record.s

4. We find that the appellant before the adjudicating authority asked for cross examination of the above three witnesses. Their statements were relied upon by the adjudicating authority by confirming the demand. We find that the Tribunal remanded the matter to the adjudicating authority on the ground that the impugned order was not speaking order. The Tribunal while passing the remand order held that the adjudicating authority has to pass an order which is speaking and well reasoned one. In the present impugned order only reason for denying the cross examination of the above witnesses is that Tribunal has not given any such direction. The requirement of principles of natural justice is that the statement of witnesses

which are being relied upon while confirming the demand an opportunity of cross examination has to be given to the assessee. In view of this, we find merit in the contention of the appellant that present impugned order is passed in violation of the principles of natural justice. The matter is remanded to the adjudicating authority after setting aside the order and to decide in accordance with law after affording an opportunity of cross examination of the above three witnesses and after affording an opportunity of personal hearing. The appeals are disposed of by way of remand.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(B.S.V. Murthy)
Member Technical

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