

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

Appeal No. E/3141/1998-3143/1998

Date 04/06/2008

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

To :  
M/S M.R.COMPOUND & ALLIED PRODUCTS  
PVT.LTD.  
MAINPURI HOLDING COMPANY MAINPURI U.P.  
M/S M.R.COMPOUND & ALLIED PRODUCTS  
PVT.LTD.

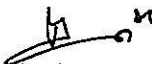
C.C.E. KANPUR

Appellant

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 289 - 291/08  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Excise dated 23-5-08

  
Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

2. Adv. / Consult

MR.A.P.MATHUR

167, TAGORE

TOWN, ALLAHABAD-

3. C.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017

7. M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)

9. Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10. Nidheshak publications. I.P.Estate. new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No. 70 (Old No. 88), Thyagaraya Road, T. Nagar, Chennai 60017

13. Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar

(Excise Appeal Branch)

1 SHRI DEWESH RANJAN SUPERVISOR M/S M.R.COMPOUND & ALLIED PRODUCTS PVT.LTD.  
MAINPURI  
2 M/ M.R.COMPOUND & ALLIED PRODUCTS PVT.LTD. (SH. SUSHIL KUMAR GUPTA)  
MAINPURI

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

**E/3141 to 3143/98**

[Arising out of Order-in-Original No.09/Commr/KC-II/98 dt.26.8.98  
passed by the Commissioner of Central Excise, Kanpur)

For approval and signature:

Hon'ble Mr. S.S. KANG, VICE PRESIDENT

Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

- 
- |                                                                                                                                                 |     |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 1. Whether Press Reporters may be allowed to see:<br>the Order for publication as per Rule 27 of the<br>CESTAT (Procedure) Rules, 1982?         | No  |
| 2. Whether it would be released under Rule 27 of :<br>the CESTAT (Procedure) Rules, 1982 for<br>publication in any authoritative report or not? | No  |
| 3. Whether their Lordships wish to see the fair :<br>copy of the order?                                                                         | Yes |
| 4. Whether order is to be circulated to the :<br>Department Authorities:                                                                        | No  |
- 

M/s. M.R.Compound & Allied Products(P) Ltd.      Appellant

Versus

CCE, Kanpur

Respondent

Appearance

Shri A.P.Mathur, Adv. For Appellant

Sh. Sanjay Kumar, Authorised Departmental Representative(DR) For  
Respondent

Coram: Hon'ble Mr. S.S. KANG, VICE PRESIDENT

Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Date of decision: ~~17.4.08~~ <sup>23.5.08</sup>  
*FINAL* Order No. 289-291/08 *EDR*

Per S.S.Kang:

The appellant filed these appeals against the adjudication order passed  
by the Commissioner of Central Excise whereby demand of Rs.19,60,247/-  
was confirmed. The adjudicating authority also confiscated the excess

goods found in the factory and allowed the release of the same on payment of redemption fine. Penalties are also imposed on the appellant.

2. Brief facts of the case are that the appellants are engaged in the manufacture of branded chewing tobacco as well as pan masala. On 23.11.96, officers of revenue visited the factory premises of the appellant and a truck loaded with the goods was found in the factory. The appellant produced invoice showing the payment of duty in respect of the goods loaded in the truck. As per the invoice, the description of the goods was mentioned as "Super Kapoori Tobacco" 6 gms in 20 bags. Each bag containing 100 packet of 25 pouches of 6 gms. Tobacco. Total weight of the consignment was shown as 300 kgs. When the bags were opened, it was found that each bag contains 150 packets, containing 25 pouches of 6 gms instead of 100 packets as mentioned in the invoice. The total weight of the consignment was found to be 450 kgs, <sup>e</sup> Instead of 300 kgs. As shown in the invoice. During the search, some loose papers were recovered from the possession of Shri Karan Singh, showing the production of the day. Certain loose papers were also recovered from the drawer of the table of Shri Devesh Rajan showing the production and clearance from 1.11.96 to 22.11.96. On verification, it was found that the same was not reflected in the statutory record. During the search, it was also found that one empty wooden Almirah kept by the wall of the packing Hall of Unit II. When Almirah <sup>was</sup> removed, one door behind the Almirah was found. When the door <sup>was</sup> opened, it was found that it was walled premises having five rooms. The loose finished goods, raw-material and packing material was found in this compound. While inspecting the premises, it was also found that one generating set was installed in the undeclared premises and one register showing the date-wise running time of generator. During search, another

premises near to the factory premises where huge stock of finished goods and raw-material were stored, was also found. During the search, the revenue officers was also found another room which was closed another side and the appellant admitted that this room also belong to them which was found to be a godown also and containing stocks of raw-materials, packing materials and finished goods. The goods found in excess <sup>of</sup> finished goods, raw-materials and packing materials were seized by the revenue officers. A show cause notice was issued for demanding duty for the period 1.11.96 to 23.11.96 on the basis of loose slips recovers from the drawer and from Shri Karan Singh and for confiscation of the seized goods and imposition of penalties. The adjudicating authority confirmed the demand and imposed the penalties and also confiscated the excess goods.

3. The contention of the appellant is that the statement of Mr. Karan Singh was not recorded under Section 14 of Central Excise Act and it was not signed by any excise officer. The contention is also that officers of revenue came to their factory premises on 23.11.96 at about 5.00 P.M. The raw materials, packing materials which were found in excess to the recorded balance, were received on that day which was to be entered in the evening. As the revenue officers were in the factory premises, therefore, they could not enter the raw-material and packing material in the statutory records, therefore, the confiscation of the same is not sustainable. The contention is also that the demand is made on the basis of loose sheets regarding which there is no evidence that the quantities mentioned in the loose sheets were cleared without payment of duty and there is no evidence regarding the receipt of consideration for sale of the quantities mentioned in the loose slips. Therefore, the demand is based on the presumption and assumption, hence not sustainable. In respect of the excess goods found in the trucks

which was loaded in the factory is that due to ignorance of the illiterate workers, excess goods were loaded in the truck as invoice has been issued showing payment of duty, therefore, there was no intention on part of the appellant to clear the goods without payment of duty.

4. The contention of the revenue is that in this case, the appellant stored the raw-material and packing material in the godown which were not declared to the revenue and the same were not entered in the statutory record. Hence liable for confiscation. The contention is that the goods which were loaded in the truck, the each bag contains 150 packets, each packet contains 25 pouches of 6 gms instead of 100 packets as mentioned in the invoice. It is not in the case of one bag. The same situation is in all the bags loaded in the truck, therefore, it cannot be said that due to negligence of the workers, this happens. There was an excess quantity of 150 kgs. on which no duty has been paid. The contention is also that as the documents recovered from the appellant premises showing the production and clearance of the goods for the period mentioned in the document which was not reflected in the statutory records, therefore, duty was rightly demanded.

5. We find that in this case admitted position is that the appellants are storing raw-material as well as excess goods and finished goods in the premises which are not disclosed to the revenue. In respect of the loose sheets showing the production and clearance of the goods which were not reflected in the statutory record, we find that the documents were recovered from Shri Devesh Rajan and Shri Karan Singh and who explained the entries. Shri Devesh Rajan accepted the entries and admitted manipulation on the advise of Shri S.K.Gupta, Managing Director. In these circumstances as the excess goods were found in the truck which were packed in systematic way to conceal the actual weight and recovery of excess raw-material valued

at Rs.8,39,196/- and packing material valued at Rs.15,10,222/-. In addition to this, the excess finished goods valued at Rs.1,35,384/- were also found in the factory. In these circumstances, we find no merit in the contention of the appellant that excess raw material and packing material was received on that day regarding which no evidence was <sup>on</sup> record. In view of the documentary evidence showing the production and clearance of the goods not reflected in the statutory record, we find no merit in these appeals. The appeals are dismissed.

*Forum* 23.5.58

(S.S.Kang)  
Vice President

(Rakesh Kumar)  
Member Technical

km