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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/3431/2004-3433/2004 Date 16/07/2008

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

To
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR & Vice-Versa

C.C.E. KANPUR Appellant
Vs
M/S UNICHEM INDIA Respondent

I am directed to transmit herewith a certified copy of **Final order No** 455-457/2008- **Excise** dated 14-7-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S UNICHEM INDIA
VILL. MALLON, CHOUBEYPUR, G.T. ROAD, KANPUR- DEHAT
2. Adv. Consult SH. BIPIN GARG, ADV., B-1/1289-A, VASANT KUNJ, N. DELHI-70
3. C.D.R.
~~4. JCDR~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (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 600017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

16. M/S UNICHEM INDIA
VILL. MALLON, CHOUBEYPUR, G.T. ROAD, KANPUR- DEHAT
17. SUSHIL CHAUDHARI, AUTHOUISED SIGNATORY OF M/S UNIC
VILL. MALLON, CHOUBEYPUR, G.T. ROAD, KANPUR- DEHAT

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI, COURT NO.III

EXCISE APPEAL NOS. 3431-33 OF 2004

Date of Hearing: 10.7.2008
Date of Decision:10.7.2008

[Arising out of Order-in-Appeal No.551 & 552-CE/ALLD/2003 dated 2.4.2004 passed by the Commissioner of Central Excise (Appeals), Allahabad]

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, 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.	:	No
2. Whether it should 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 Departmental authorities	:	Yes

M/s.Unichem India — Appellant
[Rep. by: Shri Bipin Garg, Advocate]

Versus

CCE, Kanpur — Respondent
[Rep.by:Shri V.K. Agrawal, DR]

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL **ORDER** 455-457/08-Ex

Per Archana Wadhwa:

All the appeals, one filed by the Revenue and two by the assesses, are being disposed of by a common order as they arise out of the same impugned order passed by the Commissioner (Appeals).

2. As per facts on record appellant M/s. Unichem India is engaged in the manufacture of basic chromium sulphate. Their factory was visited by the Central Excise Officers on 17.12.1996, who conducted various checks and verification. No discrepancy in the physical stock of either the raw material or the final product was detected by the officers. However, the statutory Central Excise records as also some documents which appeared to be incriminating, inclusive of two attendance registers, were seized. On the basis of some discrepancies found in four copies of the invoices as regards the vehicle numbers in the triplicate copy of the invoice and quadruplicate copy of the invoice, the proceedings were initiated against the appellant alleging that they have cleared the goods twice under the cover of the same invoices and as such has short paid duty to the tune of Rs.5,53,745/- and Rs.2,20,322/-. It may be mentioned here that the proceedings related to all the invoices and not to the four invoices in which discrepancies were found. Proposal to confirm duty of Rs.20,000/- based upon a consignment note of M/s. Shanti Roadways was also made. The notice also relied upon the statement of the authorized representative.

3. The said show cause notice was issued to the appellant on 5.12.1997 culminated into an order passed by the original adjudicating authority confirming the demands of duties, as proposed in the notice and imposing penalties. On an appeal against the above order, the Commissioner (Appeals) held that confirmation of demand of duty on the basis of minor discrepancies in four invoices, which have occurred on account of inadvertence, is not justified inasmuch as there is no proof of clandestine clearance of goods under the other invoices. As regards the discrepancies, it

stands explained that the vehicle number was mentioned as UMW-355 in triplicate copy whereas the same was shown as UMO-355 in the quadruplicate copy and such mistake occurred on account of mal-functioning of carbon. As regards the statement it was observed by the Commissioner (Appeals) that the same was retracted immediately and in the absence of any corroborative evidence to show clearances without payment of duty, the allegation cannot be upheld, he relied upon various decisions of the Tribunal. For the above findings, he also relied upon an affidavit of the customers showing that nothing has been received by them without payment of duty. The said part of the Commissioner (Appeals) order is impugned by the Revenue.

However, the Commissioner (Appeals) confirmed the demand of duty of Rs.20,000/- on the basis of the consignment note of M/s. Shanti Roadways inasmuch as the appellant was not able to offer any explanation for the same. While confirming the said demand, he upheld penalty of Rs.3,00,000/- on the manufacturing unit and of Rs.25,000/- on the authorized representative. The said part of the order is impugned by the assesses.

4. After hearing both the sides, we do not find any infirmity in the findings of the Commissioner (Appeals)., As regards dropping of demand inasmuch as the minor discrepancies in the four invoices stands duly explained by the assessee and in any case the fact of such discrepancies cannot lead *ipso facto* to the conclusion that all other invoices were also used as a means of double transportation of the goods under their coverage. The Appellate Authority has considered the full evidence on records and has

come to a right conclusion that in the absence of affirmative evidence to show clandestine removal, the charges cannot be upheld. We accordingly reject the appeal filed by the Revenue.

5. As regards confirmation of demand of Rs.20,000/-, learned advocate fairly agrees that on the face of the recovery of the consignment note and the appellant's failure to explain the same, he is not in a position to dispute the same, we accordingly confirm the said demand of Rs.20,000/-. As regards penalty of Rs.3,00,000/- for confirmation of such duty we find it on the higher side and reduce the same to Rs.20,000/-. However, penalty of Rs.25,000/- imposed upon the authorized representative Shri Sushil Choudhary is set aside. All the three appeals disposed of in the above manner.

[Operative part of the order already pronounced in the open Court on 10.7.2008]

14/7/08

[Archana Wadhwa]
Member (Judicial)

14/7/08

[M. Veeraiyan]
Member (Technical)

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