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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/3479/2004-3481/2004 - EX[DB]
E/3485-87/04-EX[DB]

Date 14/11/2008

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

To :
C.C.E. CHANDIGARH

THE COMMISSIONER OF CENTRAL EXCISE,
CHANDIGARH, PLOT NO 19, SECTOR 17-C,
CHANDIGARH.

C.C.E. CHANDIGARH — Appellant

Vs

M/S DHARAMPAL SATYA PAL — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** **866-871** **2008 EX[DB]** dated 05-11-08

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 DHARAMPAL SATYA PAL

   M/S DHARAMPAL SATYA PAL 41, INDUSTRIAL AREA, BAROTIWALA, (H.P.)

2. Adv. / Consult SH. T.R. RUSTOGI, ADV.,
   SD-84, TOWER APARTMENTS,
   PITAMPURA, DELHI-34

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 Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
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.
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13 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
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Assistant Registrar
(Excise Appeal Branch)

P.T.O.-2

17 M/S DHARAM PAL SATYA PAL
M/S DHARAM PAL SATYA PAL (TOBACCO DIVISION) 1 K.M. STONE, BADDO ROAD. BAROTIWALA. (H.P.)

18. M/S DHARAMPAL SATYA PAL UNIT-III
M/S DHARAMPAL SATYA PAL UNITNO.-III. 1 K.M. STONE , BADDI ROAD. BAROTIWALW. (H.P.)

19. M/S. DHARAMPAL PREM CHAND LTD.,
DAMONWALA, DISTT. SOLAN (HP)

20. M/S. BABA ASIA LTD.,
BAROTIWALA, DISTT. SOLAN (HP)

21. M/S. DHARAMPAL PREM CHAND LTD
1, K.M. BADDI ROAD, BAROTIWALA
DISTT. SOLAN (HP)

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

Excise Appeal Nos. 3479-81, 3485-87 of 2004

[Arising out of Order-in-Appeal No. 110-12/C E/CHD/2004 dated 17.2.2004 and 143-145/CE/CHD/2004 dated 26.2.2004 both passed by Commissioner of Central Excise (Appeals), Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, 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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : N.
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Commissioner of Central Excise
Chandigarh — Appellant

Vs.

M/s. Dharampal Satya Pal
& others — Respondent

Appearance:

Mr. Anil Khanna, DR for the Appellant
Mr. T.R. Rustogi, Advocate for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of decision : 5.11.2008

FINAL **ORDER NO. 866-871/2008-EX**

Per P.K.Das (for the Bench):

Common issue is involved in these appeals and, therefore, all are being taken up together for disposal. The respondents are engaged in the manufacture of chewing tobacco. They are also manufacturing tobacco essence captively consumed in the manufacture of chewing tobacco cleared on payment of duty. Tobacco essence was exempted from basic excise duty, special excise duty and AED (ST) for captive consumption of goods under Notification No. 121/94 dated 11.8.94 There was no such exemption is available in respect of payment of National Calamity Contingency Duty (NCCD) during the relevant period. The adjudicating authority confirmed the demand of NCCD on tobacco essence used for captive consumption along with penalty. Commissioner (Appeals) set aside the adjudication order.

2. After hearing both sides and on perusal of the order it is seen that the respondents contested the demand of duty before the Commissioner (Appeals) on excisability of the goods as well as revenue neutrality. We find that the respondents used tobacco essence in captive consumption within their factory. In this connection, the learned advocate on behalf of the respondents placed the decision of the Tribunal in their own case vide Final order No. 533/2008 Ex. dated 15.7.2004 [M/s. S.R. Fragrance Ltd. (now Dharampal Satyapal Ltd). vs. CCE, Chandigarh] wherein the Tribunal set aside the demand of duty on identical issue on the ground of revenue neutrality. The relevant portion of the said decision of the Tribunal is reproduced below:

"2. After hearing both sides, we find that the unbranded pan masala was admittedly being used captively in the manufacture of branded pan masala, which was being cleared on payment of NCCD. Apart from the fact that whether such consumption, which only requires packing unbranded pan masala in polythene pouches carrying brand name would amount to manufacture or not, we find that the entire exercise is revenue neutral, whatever duty was payable (if at all) on the unbranded pan masala was available as modvat credit to the appellant to be utilised for payment of NCCD on branded pan masala. It is seen that the appellant had paid more duty on the branded pan masala than the duty required to be paid on the unbranded product. As such, we are of the view that the entire exercise is revenue neutral and the demand of duty is required to be set aside on this ground itself. We order accordingly and allow the appeal with consequential relief to the appellant(s)."

3. We also noted that the Tribunal in the case of Commissioner of Central Excise, Trichy vs. Kulavi Tobacco Industry [2008 (227) ELT 416 (Tri-Chennai)] on the identical issue rejected the Revenues' appeal on the ground that the demand of NCCD on intermediate product and its payment by the assessee would be revenue neutral exercise.

4. In view of the above decisions, we do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, all the appeals filed by the Revenue are rejected.

(Dictated in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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