

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

Appeal No. E/532 /2006-SM[BR]

Date 09/01/2008

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

To :
CCE,GHAZIABAD
CGO COMPLEX-II,KAMLA NEHRU
NAGAR,GHAZIABAD

CCE,GHAZIABAD

M/S DELTA FOODS P LTD.

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 23/2008-SM[BR] dated 13.12.2007
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S DELTA FOODS P LTD.

B-10,SITE-I BS ROAD INDL.AREA GHAZIABAD

2. Adv. / Consult

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
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.532/2006-SM

(Arising out of order in appeal No. 137/CE/GZB/05 dated nil passed by the
Commissioner (Appeals), Customs & Central Excise, Ghaziabad)

For approval and signature:

Hon'ble Mr.S.S. Kang, Vice President)

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 ?
3. Whether Their Lordships wish to see the fair copy of the Order ?
4. Whether Order is to be circulated to the Departmental authorities?

CCE, Ghaziabad

Appellant
(Rep. by Shri B.S. Suhag, JDR)

Vs

M/s Delta Foods Pvt Ltd

Respondent
(Rep. by Shri Yogesh, Clerk of Advocate)

Coram: Hon'ble Mr S.S. Kang, Vice President

Date of Hearing: 13.12.2007

Per S.S. Kang:

Final Order No. 23/08-SM(BR)

The respondent asked for adjournment but as the case was on regular list since last one month, therefore, the request for adjournment is declined.

Heard the learned SDR.

The revenue filed this appeal against the order in appeal whereby the appeal filed by the respondent was allowed.

The brief facts of the case are that the respondents are engaged in the manufacture of biscuits and cakes. The respondents were manufacturing biscuits and cakes as job worker of M/s Britannia Industries Ltd and also manufacturing under their own brand name. The respondent asked for exemption under Notification No.8/2003 dated 1.3.2003 in respect of the goods manufactured under their own brand name. On 15.10.20203, the officers of revenue visited the premises of the respondent and found that the respondents are not maintaining separate records of common inputs to be used in goods under their own brand name, which were cleared without payment of duty as well as branded goods. A show cause notice was issued demanding duty at the rate of 8% on clearance value of goods cleared without payment of duty in terms of Rule 6 of Central Excise Rules, 2002.

The adjudicating authority confirmed the demand and imposed penalty. The respondent filed appeal and during proceeding before the Commissioner (Appeals), the respondent produced the relevant record which was verified by the jurisdictional Superintendent and vide report dated 18.10.2005, the jurisdictional Superintendent pointed out some discrepancies like non-mentioning of correct address in some of the invoices. The Superintendent of Central Excise verified all the documents and submitted that same are properly recorded in the books of accounts.

Taking into consideration the factual position, the Commissioner (Appeals) allowed the appeal. The revenue filed this appeal on the ground that the Commissioner (Appeals) has taken into consideration the

verification report of Superintendent of Central Excise but has not considered the contents of the report in the final order. Another ground is that respondent as agent, used all inputs in the manufacture of final product when they have no sufficient balance in their stock and sub subsequently adjusted in later dates and this can be possible only if the respondents are maintaining combined record of inputs.

I find that in this case, the allegation against the respondent that they are not maintaining separate record regarding common inputs used in excisable and exempted goods. The relevant records were produced before the lower authorities and the same are got verified by the Commissioner (Appeals) through the jurisdictional Superintendent. The jurisdictional Superintendent in his verification report submitted that the respondents are maintaining record and all the entries were entered in their record books. The only discrepancy pointed out by the Superintendent is that in some of the documents, correct address in some of the invoices was not mentioned. In view of this factual position, the record maintained by the respondents were got verified through the Range Superintendent and the Range Superintendent submitted that respondents are maintaining proper record. Revenue in the present appeal has not pointed out any fault in the report. In view of this, the second issue raised by the Revenue does not survive. I find no merit in the appeal and the same is dismissed.

(Order dictated and pronounced in the open Court).

MPS*

(S.S. Kang)
Vice President