

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/492 /2004-SM[BR]

Date 16/01/2008

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

To :
M/S YAMUNA BARDANA TRADERS
BEHIND POLICE STATION, INDL. AREA, YAMUNA
NAGAR, HARYANA

M/S YAMUNA BARDANA TRADERS

C.C.E. PANCHKULA

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 85/2008-SM[BR] dated 10.12.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. PANCHKULA

SCO NO. 407 AND 408, SECTOR 8, PANCHKULA
(HARYANA) 134119.

2. Adv. / Consult SHRI. KAMALJIT SINGH ADV.
J-144, PATEL NAGAR-I
GHAZIABAD[U.P.]

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)

1

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise - Appeal No. 492 of ²⁰⁰⁴2006 - SM (BR)

[Arising out of Final order No. 203/AKG/PCK/2003 dated 13.05.2003 passed by the Commissioner of Central Excise (Appeals), Gurgaon]

Date of Hearing/ Decision: 10.12.2007

For approval and signature:

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? | : | |
| 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, Panchkula Appellant
[Rep. by Mr. A. K. Rastogi, Authorised Representative (DR) for the Appellant]

Vs.

M/s Yamuna Bardana Traders Respondent
[Rep. by Mr. Kamaljit Singh, Advocate for the Respondent]

CORAM: Mr. P.K. Das, Member (Judicial)

Final ORDER No 85/08 - SM (BR)

Per P.K. Das:

Revenue filed this appeal against order-in-appeal No. 203/AKG/PCK/2003 dated 13.05.2003. Learned DR submits that the Central Excise Officers visited the appellant's factory on 18.12.97 and

detected shortage of 12576.757 Kgs. HDPE/ PP bags of finished goods. He submits that the respondent admitted the shortage of the finished goods and paid the duty under protest. He submits that the adjudicating authority confirmed the demand of duty and imposed penalty of equal amount alongwith interest, which has been set-aside by the Commissioner (Appeals). He submits that the Commissioner (Appeals) passed the order on the basis of RG-23A Part-I register which was not disclosed before the adjudicating authority even at the time of detection of the shortage. Learned Advocate on behalf of the respondent reiterates the finding of the Commissioner (Appeals). He submits that the Commissioner (Appeals) examined the RG-23A Part-I register and RG-I register.

2. After hearing both the sides and on perusal of the records, the relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

"4. It is seen from RG23 A Part-I i.e. modvatable input register and RG-I i.e. daily stock register that the appellant on receipt of modvatable main inputs i.e. PP woven fabrics, immediately on the same day issued entire quantity for manufacture and the same quantity is shown as manufactured final products on the same day. For example on 16.8.97 the appellants received 1648.600 Kgs. of P.P. Woven fabrics and the entire quantity was released for production on the same and correspondingly same quantity i.e. 1048.60 kgs. is shown as production in the RG-I register. The same practice was followed in the past period. There was no receipt of input fabrics during September 1997 accordingly there was no production shown in RG-I register. The visiting officers have not analysed this fact during their visit to the factory".

3. I find force in the submission of the learned DR that the corroboration of the RG23A Part-I register and RG-I register was not placed during the adjudication level. The Commissioner (Appeals) had also not examined this issue in detail. Therefore, I find that this is required to be examined by the adjudicating authority. Accordingly, the impugned

order is set-aside and the matter is remanded back to the adjudicating authority to examine the RG-23A Part-I register and RG-I register and to verify the contention of the respondent that in receipt of the modvatable inputs i.e. PP woven fabrics, immediately on the same day issued entire quantity for manufacture and the same quantity is shown as manufactured in RG-I register and to pass order in accordance with law. The adjudicating authority shall provide hearing before deciding the matter. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]