

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

Appeal No. C/571 -577/2007-SM[BR]

Date 25/01/2008

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

To :

(1-7) DR. ROSHANLAL AGGARWAL & SONS PVT. LTD.
16, NETAJI SUBASH MARG, DARYA GANJ, NEW
DELHI-110002

DR. ROSHANLAL AGGARWAL & SONS PVT. LTD.

C.C. (ICD) NEW DELHI

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 151-157/2008-SM[BR] dated 29.11.2007 passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C. (ICD) NEW DELHI

ICD, TUGHLAKABAD, NEW DELHI 110020.

2. Adv. / Consult SHRI. A.C. JAIN ADV.

C/O APPELLANT---

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)

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

Custom Appeal Nos. 571 - 577 of 2007 -SM (BR)

[Arising out of order in original No. 26/2007 dated 13.6.2007 passed by the
Commissioner of Customs, ICD Tughlakabad, New Delhi]

Date of Hearing/ Decision: 29.11.2007

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? | : | } <i>W</i> |
| 3. Whether Their Lordships wish to see the fair copy
of the Order? | : | } |
| 4. Whether Order is to be circulated to the Departmental
authorities? | : | } |
-

Dr. Roshanlal Aggarwal & Sons Pvt. Limited

Appellants
[Rep. by Mr. A.C. Jain, Advocate]

Vs.

CC, ICD, New Delhi

Respondent
[Rep. by Mr. A.K. Rastogi, Authorized Representative (DR)]

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

Final **ORDER** No 151-157 /08-SM(BR)

Per P.K. Das:

Common issue involves in these appeals and therefore all are taken up together for disposal.

2. The relevant facts of the case in brief are that the appellants imported homoeopathic medicines and filed bills of entry at CFS, Patparganj, New Delhi for clearance of the goods. The Custom authorities proposed to confiscate the goods

for the ground of violation of Rule 43A of Drugs and Cosmetics Rules, 1945. Commissioner of Customs, ICD, Tughlakabad, New Delhi confiscated the goods under Section 111(d) of the Customs Act, 1962 and allowed to redeem the goods on payment of redemption fine and penalty.

3. The learned Advocate on behalf of the appellants submits that the appellants are importing homoeopathic medicines through Patparganj for the last 15 years without any objection. He further submits that Rule 43A provides importation through the particular places. In this case, the appellants imported through Nhava Sheva port as mentioned in the bill of lading in compliance of Rule 43A of the Rules, and filed bills of entry at CFS, Patparganj. It is his submission that Rule 43A indicates the places through which the goods would be imported and not the filing of bill of entry. He further submits that it is a practice that the drug controller authorities examined the goods at CFS, Patparganj and therefore, confiscation of the goods is not justified. He also submits that Rule 43A is an outdated rule which has no effect at present.

4. Learned authorized representative (DR) on behalf of the Revenue reiterates the finding of the Commissioner of Customs. He submits that Rule 43A indicates ~~that~~ places of importation and in the present case place of importation is Patparganj, which is not covered under the rule.

5. After hearing both the sides and on perusal of the records, it is seen that Rule 43A of Drugs and Cosmetics Rules, 1945 provides that no drug would be imported into India except through places as mentioned in the said rule. In respect of drugs imported by sea into India the places are mentioned namely; Chennai, Calcutta, Mumbai, Cochin, Nhava Sheva and Kandla. It is seen that the place of Kolkata was inserted by GSR 505(E) dated 18.07.2002 (w.e.f. 18.07.2002). So, the contention of the learned Advocate is that Rule 43A outdated rule can not be accepted. On plain reading of Rule 43A indicates that drugs shall be imported into India through the places as mentioned therein. Part-IV of Drugs and Cosmetics Rules, 1945 provides import and registration of the medicines. On a query from

the Bench, the representative of the appellant submitted that in the case of importation of homoeopathic medicines Additional Drug Controller (ADC) is examining the consignment and send the samples for testing to the laboratory, if necessary. He further submits that it is mandatory for the customs authorities to verify the test certificate of the ADC. I find that the part-IV of Drugs and Cosmetics Rules, 1945 provides the various rules to regulate clearance of imported homeopathic medicine. Hence, clearance of imported medicine other than place of importation as mentioned in Rule 43A of the Rules is illegal and violation of the said rules cannot be treated as mere technical lapse. In the present case, the appellant imported the goods other than places as mentioned in Rule 43A of the Rules, 1945 and therefore, there is violation of the rules and accordingly confiscation of the goods is justified. It is seen that the Commissioner of Customs had already taken a lenient view regarding imposition of redemption fine and penalty. Therefore, I do not find any reason to interfere with the impugned order. Accordingly, all the appeals are rejected.

(Dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]