

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/2094/2006

Date 25/01/2008

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

To :
CCE LUDHIANA
CR. BLDG. RISHI NAGAR, LUDHIANA

CCE LUDHIANA

Appellant

M/S. MAGHAN PAPER MILLS (P) LTD.

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 165/2008-SM[BR] dated 17.12.2008
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. MAGHAN PAPER MILLS (P) LTD.
VILL. RAM NAGAR, (SIBIAN), SANGRUR
2. Adv. / Consult SHRI. BIPIN GARG ADV.
B-1/1289-A. VASANT KUNJ NEW DELHI-70
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.2094 of 2006-SM

**(Arising out of Order-in-Appeal No.246/CE/CHD/06 dt.31.5.05 passed
by the Commissioner(Appeals), Chandigarh)**

For approval and signature:

Hon'ble Mr. T.K.JAYARAMAN, 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?
 2. Whether it would 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 :
Department Authorities:
- 

CCE, Ludhiana

Appellant

Versus

M/s. Maghan Paper Nukks(P)Ltd.

Respondent

Appearance

Shri R.K.Verma, Authorised Representative(DR) For Appellant

None For Respondent

Coram: Hon'ble Mr.T.K.JAYARAMAN, MEMBER TECHNICAL

Date of decision: 17.1.08
Final Order No. 165/08-sm(BR)

Per T.K.Jayaraman:

Revenue has filed this appeal against the impugned order-in-appeal

No.246/CE/CHD/06 dt.30.8.06.

2. The Departmental Officers verified the stock in respect of manufactured goods of the respondent and found that it was in excess. Hence, proceedings were initiated. The original authority confiscated the excess goods and imposed redemption fine of Rs.30,000/- and also penalty of Rs.1,14,003/- under the relevant Central Excise Rules. When the respondent appealed to the Commissioner(Appeals) relying on various case laws and also the fact that there was no ~~admitted~~^{attempt} to clear the goods clandestinely. The Commissioner(Appeals) set aside the confiscation and reduced the penalty to Rs.5 lakhs only for the technical lapse of non-accountal of the goods. According to the revenue, the Commissioner has erred in observing that the accountal of the goods was done on estimated basis. It is stated that the excess quantity of goods deducted by the visiting staff from the recorded and bundle of stock recorded and not from the unmarked fresh production. Further, according to the revenue observation of the Commissioner that there was no attempt to clear the goods without payment of duty is incorrect as the unaccounted bundles were found duly packaged and ready for discharge to the customers and the same would have been cleared to any point of time. Further according to the revenue, the case was relied on by the Commissioner(Appeals) is not relevant. The facts of the case were distinguishable from the facts of the present case.

3. Ld. Advocate who appeared for the respondent relied on the decision of the Tribunal in the case of CCE, Rajkot vs Amrut Ceramics reported in 2007(209)ELT.390(Tri.Ahmd.).

4. On a careful consideration of the issue, I find that there was irregularity in the maintenance of account. It is not in dispute that certain quantities of finished products were not accounted for. In any case there is no evidence to show that there was an attempt to clear the same without payment of duty. According to the revenue, the goods were already packed and they could have been cleared. This is purely a presumption and on the basis of such presumption, one can not hold that excess goods are liable for confiscation. In fact in the decision relied on by the Ld. Advocate, it has been held that mere non-entry in RG.I register will not amount to manufacture of goods unless it is supported by post conducted assumption in removing the goods. The ratio of this case is clearly covered to the present case. The Commissioner's decision to restrict the penalty to Rs.5,000/- only is very judicious. This technical lapse does not call for harsh fine and penalties. Therefore, appeal of the revenue is rejected.

Order dictated in the open Court.

(T.K.Jayaraman)
Member Technical

Km