

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/3068/2007, E/STAY/2758/2007-SM[BR]

Date 13/02/2008

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

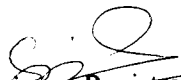
To :
M/S SEASAME FOODS PVT. LTD.
RIICO INDUSTRIAL AREA, NEEMRANA, DISTT.
ALWAR.

M/S SEASAME FOODS PVT. LTD.

C.C.E. JAIPUR I

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 295/2008-SM[BR]&S /97/2008-SM dated 18.1.08 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. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
2. Adv. / Consult
MR.ATUL GUPTA C.S.
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


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

E/ST 2758/07, E/Appeal No.3068 /2007-SM

(Arising out of order in appeal No.293/RKS/CE/JPR.I/07 dated 24.9.07
passed by the Commissioner of Central Excise (Appeals), Jaipur)

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?

NN

M/s Sesame Foods Pvt Ltd

Appellant
(Rep. by Shri Atul Gupta, C.S)

Vs

CCE, Jaipur

Respondent
(Rep. by Shri Sunil Kumar, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 18.1.2008

Stay order No. 97/08 SM(BR)
Final Order No. 295/2008-SM(BR)

Per P.K. Das:

The applicant filed this application for waiver of pre-deposit of duty of Rs.4,76,921/- and penalty of equal amount. The demand was raised on the basis of calculation of packing bags. It is seen from the adjudication order that the applicant explained the reasons for use of the bags. They also submitted reconciliation chart before the Range Superintendent as well as the Adjudicating Authority. The adjudicating authority observed that the figures shown in the reconciliation chart have not been reported to the Range Superintendent from time to time with the return. The learned Counsel submits that there is no requirement of filing of reconciliation chart of the packing material with the return. The Commissioner (Appeals) directed the applicant to deposit the entire amount of duty for hearing the appeal. The applicant failed to make deposit of the entire amount of duty and therefore, the appeal was dismissed.

2. I find that the charge of clandestine removal is based for use of the packing material. The appellants explained the reasons. It appears that the adjudicating authority has taken into consideration that the applicants have not reported to the jurisdictional Superintendent the use of the bags from time to time which is prima facie not required. However, there is a charge of

clandestine removal on the basis of evidence therefore, the appellants failed to make out a prima facie case for waiver of whole of duty and penalty. Accordingly, I modify the impugned order and ^{the} applicant is directed to deposit Rs.2 lakhs within six weeks and report compliance before the Commissioner (Appeals) on 18th March, 2008. It is made clear that on compliance of the report, the Commissioner (Appeals) shall take up the appeal for hearing on merits. The appeal and stay application are disposed of in the above terms.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)