

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/1026/2006-SM[BR]

Date 04/03/2008

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

To :
M/S BHARAT SEATS LTD.
PLOT NO-1, MARUTI UDYOG JOINT VENTURE
COMPLEX, GURGAON

M/S BHARAT SEATS LTD.

Appellant

Vs
Respondent

C.C.E. DELHI III

I am directed to transmit herewith a certified copy of Final order No. 373/ 2008-SM[BR] dated 25.1.2008
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. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ,
PHASE V, GURGAON - 122016 (HARYANA)

2. Adv. / Consult

MR. V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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 – 110 066.
Principal Bench, New Delhi**

COURT NO. III

Excise Appeal No. 1026 of 2006 – SM (BR)

[Arising out of the Order-in-Appeal No. 454/GRM/PCK/2005 dated 15/12/2005 passed by The Commissioner (Appeals), Customs and Central Excise, Gurgaon.]

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 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? :

M/s Bharat Seats Ltd.

Appellant

Versus

CCE, Gurgaon

Respondent

Appearance

Shri Ravi Raghvan, Advocate – for the appellant.

Shri A.K. Rastogi, Authorized Representative (SDR) – for the Respondent.

CORAM : Hon'ble Shri P.K. Das, Member (Judicial)

DATE OF HEARING : 25/01/2008.

Final Order No. 373/08-SM(BR) Dated : 25/1/08

Per. P.K. Das :-

The appellant filed this appeal against denial of credit on Polyol. The learned advocate on behalf of the appellant submits that the demand of duty of Rs. 43,776.00 is on the basis of alleged shortage of Polyol of 3600 Kgs. detected during stock verification. He further submits that the appellant explained that there was no shortage and it is a double entry as evident from RG-23A Pt. I register. Regarding the demand of duty of Rs. 1,09,155.00 was raised on waste of Polyol, which is approximately 0.36%. covered by the Board Circular No. B-4/7/2000-TRU dated 03/04/00.

2. The learned DR reiterates the findings of the Commissioner (Appeals). He submits Commissioner (Appeals) examined the RG-23A Pt. I register and there was

no double entry. He further submits that there is no provisions for allowing the credit on waste under Cenvat Credit Rules 2000.

3. After hearing both the sides and on perusal of records, I find that the appellant in reply to show cause notice categorically stated that the quantity of 3600 Kgs. Of Polyol under bill of entry No. 06549 dated 27th March 2001 was received on 2nd February 2001, which was entered in RG-23A Pt. I register twice under Polyol A-I and Polyol A-II by mistake by the store department. I find that the entries in the store department and RG-23A Pt. I register are required to be examined as the Commissioner (Appeals) observed that the appellant could not prove that there was double entries in RG-23A Pt. I register. Therefore, the Adjudicating Authority is required to examine the RG-23A Pt. I register and the store register vis-à-vis. The second issue, I find the Commissioner (Appeals) observed that it is admitted fact that certain quantity of Polyol is left in the drums uncovered and is never transferred to the bonded tanks for use. Thus, it is evident the said quantity is waste material. Central Board of Excise and

Customs vide Circular F. No. V/457/2000 dated 03/04/2000 clarified that Cenvat Credit shall be admissible in respect of amount of inputs contained in waste, refuse or by product. It is seen that the waste quantity is of 0.36% and covered by the Board Circular. Accordingly, the demand of duty on this issue is not sustainable.

4. In view of the above, the demand of duty of Rs. 1,09,155.00 is set aside. Further, the demand of duty of Rs. 43,776.00 is set aside and remanded back to the Adjudicating Authority to examine double entry as contended by the appellant in the store records and RG-23A Pt. I register and to pass order afresh in accordance with law. It is seen the demand relates to interpretation of the provisions of the rules and therefore penalty is not warranted and penalty is set aside. The impugned order is modified accordingly.

(Dictated and pronounced in open court)

(P.K. Das)
Member (Judicial)

PK