

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/2356/2006-SM[BR]

Date 20/03/2008

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

To :
M/S BRAHMPUTRA PROCESSORS (P) LTD
BYE PASS CHOWK, FATEHGARH CHURIAN ROAD,
VILL. NANGLI, AMRITSAR

M/S BRAHMPUTRA PROCESSORS (P) LTD


Appellant

THE COMMISSIONER OF CENTRAL EXCISE
JALANDHAR

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 446 /2008 -SM [BR] dated 16.1.2008

passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF CENTRAL EXCISE
JALANDHAR
JALANDHAR HQR AT CHANDIGARH, SECTOR 17-C,
CHANDIGARH

2. Adv. / Consult

MR.J.P.KAUSHIK
A-14/3, SFS FLATS, SAKET, NEW DELHI-110017

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

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

E/Appeal No.2356 /2006-SM

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?

M

M/s Brahmputra Processors (P) Ltd

Appellant

(Rep. by Shri J.P. Kaushik, Advocate)

Vs

CCE, Jalandhar

Respondent

(Rep. by Shri Rajmal, DR)

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

Date of Hearing: 16.1.2008

FINAL Order No. - 446 / 2008 SM / BR

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the processing of Man Made Fabrics. On 11.4.2002, the Central Excise Officers intercepted a Matador loaded with a consignment of Processed Man Made Fabrics without any duty paying documents. The

officers conducted stock verification at the appellants factory and detected excess stock of Processed Man Made Fabrics and Unprocessed Grey Fabrics against the recorded balance in Registers. The adjudicating Authority confirmed the demand of duty of Rs. 47,860/- alongwith interest, on Processed Man Made Fabrics seized outside the factory and confiscated the said goods and imposed redemption fine of Rs.90,000/- and penalty of equal amount under Section 11AC of the Act. He also confiscated the excess stock of fabrics seized inside the factory and imposed redemption fine of Rs.90,000/- on Processed Man Made Fabrics and Rs. 4 lakhs on Unprocessed Grey Fabrics. The Commissioner (Appeals) modified the adjudication order in so far as redemption fines on seized materials at factory premises were reduced to Rs.25,000/- and Rs. 1 lakh.

2. The learned Advocate submits that the appellants deposited the entire amount of duty on the seized goods outside the factory premises alongwith penalty of 25% of duty within one month from the date of receipt of the adjudication order. He submits that penalty should be reduced to 25% of the amount of duty. He also submits that redemption fines are excessive. He submits that confiscation of grey fabrics under Rule 25 of the Central Excise Rules,2002 is not justified. He relied upon the following decisions of the Tribunal:-

- a) Mohindra Enterprises Vs CCE Jalandhar
2007 (80) RLT 634
- b) CCE Indore Vs Ajmer Food Industries
2004 (60) RLT 927

3. The learned DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the adjudicating authority rightly

imposed redemption fine on the seized goods outside the factory. It is a case of clandestine removal. He further submits that clause (b) of sub-rule (1) of Rule 25 of Central Excise Rules, 2002 provides that a manufacturer does not account for any excisable goods stored by him, shall be liable to confiscation. Therefore, the Grey Fabrics are, an excisable goods stored by them without any account, liable to confiscation.

4. After hearing both the sides and on perusal of record, I find that the appellants deposited the entire amount of duty alongwith interest and penalty of 25% of the duty on the goods seized outside the factory premises. In terms of first proviso to Section 11AC of the Act, penalty on the seized goods outside the factory is reduced to 25% of the duty as determined (i.e. Rs.11,970/-). Regarding confiscation of Unprocessed Grey Fabrics under Rule 25, it is seen that the appellants received raw material i.e. Unprocessed Grey Fabrics at their factory for processing which was confiscated by the adjudicating authority. The Tribunal in the case of Mohindra Enterprises (supra) held that confiscation of raw material under Rule 173-Q of the erstwhile Central Excise Rules, 1944/~~Rule 25 of Central Excise Rules, 2002~~ is not applicable. The relevant portion of the said decision is reproduced below:-

“In the present case, the Revenue wants to invoke the provisions of Rule 173-Q of Central Excise Rules which provides that if any producer, registered person of a warehouse or a registered dealer does not account for any excisable goods manufactured/produced or stored by him such goods are liable for confiscation and the similar are the provisions regarding imposition of penalty under Rule 209 of Central Excise Rules. The provisions of Rule 209 provides that if any manufacturer, producer or

registered person of a warehouse or a registered dealer does not account for any excisable goods manufactured, produced or stored by him such goods are liable for confiscation and the manufacturer is liable for penalty. While interpreting these provisions the Tribunal in the case of CCE Vs Avanti LPG India Ltd (supra) held that the assessee is neither a producer or nor registered person or a registered dealer but merely user of raw material, consequently goods cannot be called excisable goods in terms of definition contained in Section 2(d) of Central Excise Act. The raw material was received by the assessee after due discharge of duty, therefore, this cannot come under the category of excisable goods.”

In view of the decision of the Tribunal, the confiscation of raw material i.e. Unprocessed Grey Fabrics is not justified.

5. Regarding confiscation of Processed Man Made Fabrics, it is revealed from the impugned order that the said fabrics were last night product, which were to be recorded in R.G.I on the next day (i.e. 11.4.04) and the Central Excise officers visited the factory on 11.4.04 in the morning at about 9.30 AM. The Commissioner (Appeals) observed that the seizure of goods outside the factory without payment of duty, which appears to be influenced the mind of adjudicating authority to conclude the Processed Man Made Fabrics lying unaccounted for clandestine removal. It appears that the quantity of seized Processed Man Made Fabrics was day's production and adjudicating authority confiscated the goods on the basis of assumption and presumption and therefore, confiscation of Processed Man Made Fabrics is not maintainable.

6. Hence confiscation and imposition of redemption fine on Processed Man Made Fabrics and Unprocessed Grey Fabrics within the factory are set

aside. The demand of duty, imposition of penalty and redemption fine on the Processed Man Made Fabrics seized outside the factory are upheld. But penalty is reduced to Rs. 11,970/- as the appellant deposited the duty with interest and penalty of 25% of duty within one month from the date of receipt of adjudication order. Considering the facts and circumstances of the case, redemption fine is reduced to Rs. 60,000/-. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)