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

Date 20/03/2008

Appeal No. E/2976/2006-SM[BR]

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

To :
M/S SUN PRODUCTS (P)LTD
133/157,RATTUPURWA,TRANSPORT
NAGAR,KANPUR.

Appellant
Vs
Respondent

M/S SUN PRODUCTS (P)LTD

C.C.E. KANPUR

I am directed to transmit herewith a certified copy of **Final order No**. 457 /2008-SM[BR] dated 13.3.2008 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. KANPUR
   117/7,SARVODAYA NAGAR,KANPUR.
2. Adv. / Consult
   MR.VERMA KANT & ASSOCIATES
   704,NILGIRI APARTMENT,9,BARAKHAMBA ROAD,N.DELHI
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 Publictions (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
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15. Guard file

Assistant Registra
(SM Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK R.K. PURAM NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. IV
Excise Appeal No. 2976/06
(Arising out of Order-in-Appeal No. 215-216-ce/appl/knp/2006 dated 14.06.2006 passed by Commissioner of Central Excise (Appeals), Kanpur.)

For approval and signature:
Hon'ble Mr.A.K.Srivastava, 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?	: No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	: Yes
4.	Whether Order is to be circulated to the Departmental authorities?	: Yes

M/s Sun Products Pvt Ltd — Appellants
Vs
Commissioner of Central Excise, Kanpur — Respondents

Appearance:

Shri Krishna Kant, Advocate, for Appellants
Shri B.S. Suhag, D.R, for Respondents
CORAM:

Hon'ble Mr.A.K. Srivastava, Member (Technical)

Date of Decision: 13.3.08

FINAL ORDER NO. 457/2008 SM/BR

Per: Mr A.K. Srivastava, Member (Technical)

1. Heard both the sides and perused the records.

2. The brief facts of the case are that during the course of physical verification of stock of finished goods and raw material, at the premises of the appellants on 12.2.2004, 410 kgs of supari (main raw material for manufacture of gutkha) was found short of the recorded balance. Besides this, a hand written slip indicating receipt of 18 bags weighing 1278.6 kgs supari was recovered from the pocket of Shri Ram Lakhan Sharma, Supervisor. However, no such stock of supari was found entered in their records and no quantity of such consignments was physically available in the factory. Shri Prem Kumar Mishra, Director of the appellants in ~~the~~ his on-the-spot statement recorded on 12.02.04 under Section 14 of the Central Excise Act, 1944 clearly accepted the recovery of the purchas from the pocket of Shri Ram Lakhan Sharma, Supervisor and also signed the same. He has also accepted that 18 bags of supari were received by them and this supari was used in the manufacture of the final product and they have cleared the final product without payment of Central Excise duty and the duty involved therein was Rs 2,45,487/-, which they will deposit. Regarding shortage detected in stock of supari of 410 kgs, he has stated that, as per their formula, they have manufactured 4771 p~~o~~ackets out of 410 kgs of short found supari, and the duty amounting to Rs 78,721/- involved will be deposited.

3. Further, in the follow up action conducted at the premises of the supplier of the supari, its authorized signatory, in his statement recorded under Section 14 ibid admitted that they had sold 18 bags of supari weighing 1260 kgs (net) to the appellants, for which Shri Harish Kumar Makhija, the brand-name owner of 'Kesar' brand of gutkha manufactured by the appellants, had ordered on telephone to be delivered at their factory

and he had got the said consignment delivered to the appellants through the transporter.

4. The driver of the tempo on which the said consignment of 18 bags has been transported, in his statement dated 12.02.04 admitted that he has transported the said 18 bags to the appellants 3-4 days back and no documents covering the said consignment were given to him.

5. In view of the above said various statements recorded in respect of 18 bags received by the appellants and short found 410 kg supari in the stock, it is clearly established that the appellants were involved in the clandestine manufacture and removal of the goods. The appellants paid the duty of Rs 3,24,208/- without demur. No statement has been retracted, which means that the statements are voluntary in nature and have not been obtained under threat or coercion. Even the payment of duty is not under protest. Supari is the most important and principal raw material, which goes in the manufacture of gutkha. None of the case laws quoted by the appellants cover similar facts showing unexplained shortage in the stock of the main input, corroborated with the confessional statements, regarding the manufacture of the goods out of the said shortage.

6. The Assistant Commissioner, vide Order-in-Original dated 23.1.2006, confirmed the duty of Rs 3,24,205.80 and imposed equivalent penalty of Rs 3,24,209/- on the appellants under Section 11AC of the Central Excise Act, 1944 apart from demanding interest under Section 11AB ibid.

7. On appeal, the Commissioner (Appeals), taking into account the fact that the appellants have deposited the entire duty before the issue of the show cause notice, reduced the penalty to Rs 50,000/-, while upholding confirmation of the demand of duty along with interest.

8. The Hon'ble Tribunal in the case of *Gulabchand Silk Mills Pvt Ltd vs CCE, Hyderabad II* reported in 2005 (184) ELT 263 (Tri-Bangalore) has held that:

> "In any type of clandestine activity, the persons try their best not to leave any evidence, therefore, such persons cannot be expected to faithfully put the details of all such clearances in some register and append their signature. Hence, clandestine activity at best can be established only by circumstantial evidence and it will be humanly impossible to establish every link in the chain of clandestine activity without any break."

9. In the instant case, I find that the clandestine activity is clearly established by the circumstantial evidence. It is also to be noted that gutkha is a sensitive, evasion-prone commodity.

10. The Hon'ble Supreme Court in the case of *Commissioner of Central Excise, Madras vs Systems and Components Pvt Ltd* reported in 2004 (165) ELT 136 (SC) has held that it is a basic and settled law that what is admitted need not be proved.

11. In the light of the foregoing discussions, I hold that the impugned order passed by the Commissioner (Appeals) does not warrant any interference. The same is upheld and the appeal is rejected.

(Pronounced in Court on...13.:.3.2008.)

(A.K. Srivastava)
Member (Technical)

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