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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

Appeal No. E/3697/2006-3700/2006 Date 27/03/2008

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

To :
M/S PATEL BROTHERS
36-37, GAURA BAGH, KURSI ROAD, LUCKNOW.

M/S PATEL BROTHERS Appellant
Vs
C.C.E.LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 474 -477 /2008 –SM[BR] dated 7.3.2008 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.LUCKNOW
   7-A, ASHOK MARG,LUCKNOW.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

2. SH OM NARAIN PATEL PROP
36-37, GAURA BAGH, KURSI ROAD, LUCKNOW.
3. M/S HARSINGAR GUTKHA PVT LTD
33-34, GAURA BAGH, KURSI ROAD, LUCKNOW.
4. SH MAHESH SINGH
MANAGING DIRECTOR,M/S HARSINGAR GUTKA PVT LTD, 33-34, GAURA BAGH, KURSI ROAD, LUCKNOW.

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

Excise Appeal No. 3697-3700 of 2006 –SM (BR)

(Arising out of Order-in-Appeal No. 110-113-CE/2006 dated 10.8.2006 passed by the Commissioner of Central Excise (Appeals), Lucknow)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?**	no
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.**	no

1. M/s Patel Brothers — Appellants
2. Sh. Om Narain Singh
3-4 M/s Harsingar Gutkha Pvt. Ltd.

Vs.

CCE, Lucknow — Respondent

Appearance :
Shri Kishan Kumar, Advocate - For appellant
Shri V.K. Agarwal, Jt. CDR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 7.3.2008

Final Order No. 474 to 477/08-S.M(BR) dated 7.3.08

Per S.S. Kang:

The appellant filed these appeals challenging the imposition of penalties. M/s Harsingar Gutkha Pvt. Ltd are investigation, it was found that M/s Harsingar Gutkha cleared the goods without payment of duty under the cover of bogus invoice to various dealers. During investigation dealers admitted that the goods were received under the photocopy of invoices which were subsequently returned.

2. The only contention of the appellant is that duty has been paid prior to issuance of show-cause notice, therefore, are not liable for penalty. The appellant relied upon the decision of the Tribunal in the case of **Rashtriya Ispat Nigam Ltd. Vs. CCE** reported in 2003 (161) ELT 285 which has been upheld by the Hon'ble Supreme Court. The appellant also submitted that the penalty was imposed under Rule 173Q of the Central Excise Rules but sub-clause of Rule 173Q is not mentioned in the show-cause notice or in the order-in-original, therefore, the penalty is not sustainable.

3. Ld. SDR appearing on behalf of the Revenue submitted that the goods were cleared under the bogus invoices and this fact has been admitted by the dealers of the manufacturers.

5. In this case, the penalty was imposed on the ground that the manufacturer cleared the goods without payment of duty under bogus invoices. The appellant relied upon the decision of the Tribunal in the case of **Rashtriya Ispat Nigam** Ltd. (supra). In the case of **Rashtriya Ispat** (supra), the manufacturer is availing the benefit of notification and when Revenue pointed out that assessee is not entitled for the same, they paid the duty and starting clearing goods on payment of duty. In this situation, the Tribunal held that it is not a case for imposition of penalty under Section 11AC as well as under Rule 173Q of Central Excise Rules. The facts of the present case are different. In the present case the appellant cleared the goods under the bogus invoices, therefore, the ratio of the above decision is not applicable on the facts of the present case. The contention of the appellant is that sub clause of Section 173Q of Central Excise rules has not been mentioned in the show-cause notice, therefore, penalty is not sustainable. The appellant relied upon the decision of Hon'ble Supreme Court in the case of **Amrit Foods Vs. CCE** reported in 2005 (190) ELT 433. In this case, the Hon'ble Supreme Court held that

assessee has put on notice as to the exact nature of contravention for which the assessee was liable under the provisions of Rule 173Q.

5. In the present case, in the show-cause notice there was specific allegation that the goods were cleared without payment of duty under bogus invoices, therefore, contravened the provisions of Rule 173Q of Central Excise Rules. In these circumstances, as there was specific allegation in the show-cause, therefore, the ratio of the above decision is not applicable on the facts of the present case.

6. In the appeal filed by Patel Brothers, the contention of the appellant is that the firm is proprietor concerned of Shri Om Narain Singh and penalties imposed from the proprietary concern as well as on the proprietor in this situation, the penalty imposed on Shri Om Narain Singh is set aside as in the case of proprietary concern, penalty has been

imposed for contravention of provisions of Central Excise Rules. The appeal filed by the Om Narain Singh is allowed other appeals are dismissed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM