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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/847 /2006-SM[BR]   Date 27/03/2008

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR   Appellant
Vs
M/S SHIVNATH ORGANICS P LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 484 /2008 –SM[BR] dated 4.3.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S SHIVNATH ORGANICS P LTD.
   PLOT NO-3/4,MPAKVN GROWHT
   CENTRE,RASMADA,BORAI,DISTT.DURG (CG)
2. Adv. / Consult
   NONE----------

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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL No. 847 OF 2006-SM

[Arising out of Order-in-Appeal No. 65/RPR-II/2005 dated 21.12.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur]

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

C&CCE, Raipur Appellant

Vs.

M/s. Shivnath Organics Pvt. Ltd. Respondents

Appearance:

Ms. Archana P. Tiwari, Jt.CDR for the Revenue,
None for the respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President,

Date of Hearing: 3rd March, 2008

FINAL ORDER NO. 484/08-SM(BR) dated 4.3.08

Per S.S. Kang:

Heard learned Jt. CDR as none appeared on behalf of the respondents in spite of notice.

2. Revenue filed this appeal against the impugned order whereby the Commissioner (Appeals) upheld the impugned order whereby proceedings against certain quantities of inputs which were seized were dropped. The Commissioner (Appeals) has held as under:-

5. I have carefully considered the grounds of review, submissions made by the respondents and all other evidence on record. On going through the impugned order it is seen that the lower authority in paragraphs 25, 26 & 27 of the order has held that the raw materials namely raw dichloro benzene, had been subject to the process of manufacture but due to sudden breakdown in the plant, it had not resulted in the emergence of the final product. The product was still in its semi-finished form. Shri Nikunj Patel, director of the respondent company, who was available on the spot at the time of verification also affirmed this in his statement dated 01.11.2001. So also this was corroborated by the fact that the factory was closed for a period of 72 days. It is seen that these findings on facts of the lower authority have not been contested by the reviewing authority and do not form part of the grounds of review. Therefore, the reviewing authority indirectly accepts the setting off of the excess quantity of 13685.8 kg of raw material that is, raw dichloro benzene with the alleged shortage of the finished quantity of 13685.8 kg of dichloro benzene. When that is the case, how can the reviewing authority question the release, by the lower authority, of seized raw material - 13685.8 kg of dichloro benzene, when such release logically follows the setting off as indicated above. The setting off of 13685.8 kg excess raw material – dichloro benzene against shortage of finished 13685.8 kg was rightly done by the lower authority. The lower authority correctly ordered release of 13685.8 kg of seized dichloro benzene. Consequently there is no question of confiscation of such goods. I, therefore, see no infirmity in this decision of the lower authority and the decisions taken by the lower authority are upheld as being legal and proper.

6. In the review application, the case did not relate to one of 'clandestine removal' but of 'clandestine storing'. This ground taken by the review authority is without any base. I have gone through the panchnama and nowhere in the panchnama is it stated that the raw material was hidden or concealed so as to constitute the storage as

This finding is challenged by the Revenue on the ground that this explanation of the present respondents does not appear to be acceptable because, firstly, raw material has not acquired the required standard of semi-finished goods, it should not have been accounted under the stock account of semi-finished goods, secondly, if it was wrongly accounted as semi-finished goods then it should have been transferred under the raw material account at the time when it was taken back from the process and stored along with other raw material.

3. I find that the Commissioner (Appeals) in the impugned order gave a specific finding that the finding of the adjudicating authority in respect of setting off the excess quantity of raw material was not challenged. In such a situation the Revenue cannot question the release of the seized material by the adjudicating authority. In view of this, I find no infirmity in the impugned order. Appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 4th March, 2008

RK