

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/3749/2005-3750/2005-SM[BR]

Date 27/03/2008

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


To :
C.C.E LUDHIANA
F-BLOCK, RISHI NAGAR, LUDHIANA

C.C.E LUDHIANA

M/S SPINTEX WOOLEN MILLS

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 488 -489 /2008 -SM[BR] dated 12.11.2007 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 SPINTEX WOOLEN MILLS
B-XXIX/27, SHERPUR CHOWK, G.T.ROAD,
LUDHIANA


[2]M/S RAM IMPORTS &EXPORTS
640/2, AGGAR NAGAR, LUDHIANA[P.B]

2. Adv. / Consult MR. HARBANS SINGH CONSULANT.
C/O RESPONDENT-----

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 AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

**Excise Appeals Nos.3749-50 of 2005 -SM (BR)
E/CO/207-208/07-SM (BR)**

[Arising out of order in appeal No.336-337/CE/Apl./Ldh/2005 dated 4.7.2005
passed by the Commissioner (Appeals), Central Excise, Ludhiana]

Date of Hearing/ Decision:12.11.2007

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. | : | } 27 |
| 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? | : | |

CCE, Ludhiana

Appellants
[Rep. by Shri S. Gautam, DR.]

Vs.

1. M/s. Spintex Woollen Mills
2. M/s. Ram Imports & Exports

Respondent
[Rep. by Mr. Harbans Singh, Consultant]

CORAM: Mr. P.K. Das, Member (Judicial)

Final Order NO. 488-89/08-SM(BR) / Dated: 12.11.2007

Per P.K. Das:

The Revenue filed these appeals against Order-in-Appeal No.336-337/CE/APPL/LDH/2005 dated 4.7.2005 whereby Commissioner (Appeals) set aside the adjudication order.

2. The relevant facts of the case, in brief, are that the Respondents No.1 were engaged in the manufacture of Woollen Worsted Yarn (in short the said goods) classifiable under Heading No.5501 of the Schedule to the Central Excise Tariff Act, 1985. On 21.7.98, the central excise officers intercepted one cycle rickshaw loaded with the said goods without any duty paying documents. The rickshaw puller stated that the goods were loaded at the factory premises of the Respondent No.1. Then the central excise officers visited and verified the stocks of finished goods at the factory premises of the Respondent no.1. They have also seized finished goods along with other documents. Apart from that, the said officers found two invoice books in the name of M/s. Ram Imports and Exports, Respondent No.2 herein. The said officers recorded the statement of Shri Gaurav Gupta, Partner of Respondent No.1 who stated that the quantity shown in the said invoice books were removed by them without payment of duty. On 24.7.98, the said officers recorded the statement of the other partner of the

Respondent No.1, Shri Ram Lal Gupta, Sole Proprietor of Respondent No.2.

It is noted that Shri Ram Lal Gupta is the father of Shri Gaurav Gupta confirmed the contents of the statement of Shri Gaurav Gupta.

3. By letter dated 10.8.98, the partner of Respondent No.1 informed the Asstt. Commissioner of Central Excise that the invoices were issued under pressure. A show cause notice dated 28.12.98 was issued in respect of the seized goods outside of the factory. Further, on 16.2.99, statement of the partner, Shri Ram Lal Gupta of Respondent no.1 was recorded. Thereafter, another show cause notice dated 2.1.03 was issued proposing demand of duty on the basis of the invoice book recovered from the premises of the Respondent no.1, which is the subject matter of the present appeal. The appellant filed reply to the show cause notice by letter dated 17.6.2003 and 26.6.2003. They have also retracted the statements in their reply to the show cause notice. In the meantime, the adjudicating authority passed the order against show cause notice dated 28th December, 1998 and confiscated the seized goods and imposed redemption fine and penalty. The Commissioner (Appeals) by Order-in-Appeal dated 5.11.2003 modified the order insofar as the penalty was reduced and otherwise appeal was rejected. The Respondent no.1 filed an appeal before the Tribunal against the Order-in-Appeal dated

5.11.2003, which was dismissed by Final Order No.1198 of 2006-SM (BR) dated 12.7.06.

4. In the present case. by Adjudication Order dated 7.3.2005, the Dy, Commissioner of Central Excise, confirmed the demand of duty alongwith interest on the goods cleared clandestinely on the invoices in the name of Respondent No.2 as recovered from the premises of Respondent no.1 and also imposed penalty under Section 11 AC of Central Excise Act, 1944, Rule 173 Q and 226 of the erstwhile Central Excise Rules, 1944 separately upon Respondent No.1 and penalty under Rule 209A of the said Rules on Respondent No.2. The Respondents filed appeals against the adjudication order before the Commissioner (Appeals). In the impugned order, the Commissioner (Appeals) allowed the appeals filed by the Respondents and set aside the adjudication order. Hence, the Revenue filed this appeal against the impugned order.

5. Ld. DR on behalf of the Revenue submits that Shri Gaurav Gupta, Partner of the Respondent No.1 in his written statement, on the spot, admitted the removal of the goods clandestinely on the basis of the invoice book as recovered from their premises. He further submits that the other partner, Shri Ram Lal Gupta in his statement dated 24.7.98 confirmed the content of the statement of Shri Gaurav Gupta. He further submits that the

Commissioner (Appeals) observed that the respondents vide its letter dated 10.8.98 retracted the statements but, there is no indication of retraction of statements in the said letter. He further submits that the findings of the Commissioner (Appeals) that the statements are not voluntary, are absolutely erroneous and contrary to Final Order dated 12.7.2006 passed by the Tribunal in respect of seized goods.

6. Ld. Counsel on behalf of the respondents reiterates the findings of the Commissioner (Appeals). He submits that the Commissioner (Appeals) dropped the proceedings after considering the various factors. He further submits that the Final Order dated 12.7.2006 of the Tribunal is not applicable herein. In this connection, he submits that the respondents by letter dated 10.8.98 retracted the contents of the statements dated 21.7.98 and 24.7.98, which were not placed before the Tribunal in the earlier cases. He further submits that the earlier proceeding was in connection with the seized goods outside the factory, which has no relevancy with the present proceeding. In the present case, the demand of duty was raised on the basis of invoices of Respondent No.2.

7. After hearing both the sides and on perusal of the records, it is seen that on 21.7.98, the Central Excise Officers intercepted one cycle rickshaw loaded with excisable goods. The rickshaw puller could not produce any

duty paying documents. Then, the officers visited the factory ~~of the~~ premises of the respondents and recovered the invoice books in the name of Respondent No.2 from the premises of the Respondent No.1. Shri Gaurav Gupta, partner of the Respondent No.1 admitted that the Respondent No.1 cleared the goods accompanied with the invoices without payment of duty as recovered from their premises. It is further seen that the other partner, Shri R.L. Gupta in his statement dated 24.7.98 confirmed the statement of Shri Gaurav Gupta. The main contention of the Id. Consultant of respondents is that the statements were recorded under duress. I find that another proceeding was initiated in respect of the seized goods outside the factory on the basis of the said statements, which was taken finality by Final Order dated 12.7.2006 of this Tribunal. The Tribunal did not accept the plea of the respondent that the statements were taken under duress. The relevant portion of the decision of the Tribunal is reproduced below:-

“Considered the submissions made by both sides at length and perused the record. I find that in this case the appellants goods were intercepted by the Preventive Staff without having any duty paying documents with the rickshaw puller. Subsequent investigation carried out by the department clearly indicate and evidence, that the

goods which were removed out of the factory on 21.7.1998 were cleared without payment of duty. On the same day the partner of the appellants had admitted that the intercepted goods were removed without payment of duty and without any documents. On the back drop of this, excess goods which were found in the factory premises of the appellants without being recorded in the statutory record would create an inference that the appellant had intention to remove the goods clandestinely. As regards the contention of the appellants that the statement of the partner was retracted by him on 22.7.98, I find that there is nothing on record to indicate that the partner had executed an affidavit on 22.7.98 retracting the statement made by him earlier and filed with lower authorities. On the contrary it is on record that the partner of the appellants had indicated the retraction of the statement on 28.4.2000 i.e. at time of personal hearing before the adjudicating authority. To my mind this cannot be considered as retraction by the partner in as much that it was given almost after 2 years of the first

statement given by the partner. This would definitely indicate an afterthought for covering the whole issue. I find that the rickshaw puller had at the time of interception had given a statement that the seized goods were removed from appellant's factory without documents, this statement remains unretracted and uncontroverted. Further, I find that the finished goods which were seized from the factory were in completely finished stage and the records indicate that the goods cannot be under process or not complete as contended by the learned Consultant. In view of this, I find that the confiscation of the finished goods is proper and in accordance with the law."

9. The Commissioner (Appeals) observed that respondent by their letter dated 10.08.98 stated that the invoices were issued under all type of pressure. He has treated the said letter dated 10.08.98 as the reaction of the statement dated 21.7.98 and 24.7.98. On perusal of the said letter dated 10.08.98, I find that there is no mention of retraction of statement dated 21.7.98 and 24.7.98. So, the findings of the Commissioner (Appeals) in this

regard are without any substance. The Tribunal vide Final Order dated 12.7.2006 held that the said statements were not recorded under duress.

10. In view of the above discussion, the impugned order against Respondent No.1 is set aside and the adjudication order is restored. However, considering the facts and circumstances of the case, the imposition of penalty under Rule 173Q and Rule 226 of the erstwhile Central Excise Rules, 1944 upon the Respondent No.1 is set aside. With regard to penalty on Respondent No.2, I do not find any material to invoke Rule 209 A of the erstwhile Rules and, therefore, the appeal against Respondent No.2 is rejected.

Order dictated & pronounced in open court on 12.11.2007.

(P.K. Das)
Member (Judicial)

Ckp.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
(Principal Bench)

West Block No.2, R.K. Puram, New Delhi-110066
SINGLE MEMBER APPEAL BRANCH

Date :28/07/2008

MISC Order No. 198 /2008 -SM [BR]

Application E/ROM/18/2008

Appeal E/3749 - 3750 [BR]

1. Appellant
C.C.E LUDHIANA
F-BLOCK, RISHI NAGAR, LUDHIANA
2. Respondent
M/S SPINTEX WOOLEN MILLS
B-XXIX/27, SHERPUR CHOWK, G.T.ROAD,
LUDHIANA
3. Adv / Consult :SHRI HARBANS SINGH GIANI ADV.
M/S RESPONENT;-----
4. C.D.R
5. Bar Association, CESTAT, New Delhi.
6. M/s. Deeparchi Publications, M-93, Marg. 43, Saket, New Delhi.
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, Opp. Sachdeva P.T. College of Defence Colony, New Delhi - 110003
8. Excise & Customs cases, B-37, Sector -1, Noida - 201301 (U P)
9. R.Venkatraman, Constt. 44B, S. Suncity,Ghaziabad - 201010, U.P.
10. Director Publications, Customs, Excise. I.P. Estate, New Delhi
11. Taxmann Allied Service Pvt. Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026.
12. Co. Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 70
14. Office Copy
15. Guard File


Assistant Registrar
(SM Branch)

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

E/ ROM 18/08, E/Appeal Nos.3749-3750 /2005-SM

CCE, Ludhiana

Appellant
(Rep. by Shri A.K. Rastogi, DR)

Vs

M/s Spintex Woolen Mills

Respondent
(Rep. by Shri Harbans Singh, Advocate)

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

Date of Hearing: 23.6.08

Misc Order No. 198 /2008-SM(BR)

Per P.K. Das:

Heard both the sides and perused the records.

2. The Respondent filed this application for rectification of mistake in the Final Order No. 488-89/08-SM(BR) dated 12.11.2007. The learned Consultant submits that some of the submissions of respondents were escaped in the finding of Tribunal's order, which are as under :-


- a) The demand of duty is barred by limitation;
- b) They are entitled to avail cenvat credit;
- c) There is a calculation mistake in as much as the alleged clearances were calculated at the rate of Rs.290/- whereas the applicant cleared the products at the rate of Rs. 175/- or Rs.200/- per kg.

3. On perusal of the Final order dated 12.11.07, I find that the Tribunal observed that there is clandestine removal of goods which is supported by the statements of various persons. It was contended that the statements were recorded under duress. It is revealed that the Tribunal followed the earlier



final order dated 12th July, 2006. The Tribunal set aside the order of the Commissioner (Appeals) and restored the adjudication order.

4. I find that it is a case of clandestine removal and therefore, proviso to sub section (1) of Section 11A of the Central Excise Act, 1944 was rightly invoked. Regarding calculation mistake, I do not find any submission at the time of appeal hearing. In any event, I direct the Adjudicating Authority to consider the respondents claim of cenvat credit while calculating the demand of duty in accordance with law.


5. In view of the above discussion, at ^{the end of} paragraph 10 of the Final order dated 12.11.2007, the following shall be read:- 

“The Respondent No.1 would be entitled to avail cenvat credit in accordance with law.”

6. The ROM application is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

MPS*


(P.K. Das)
Member(Judicial)