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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/1864/2006-1865/2006-SM[BR] Date 31/03/2008

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

To :
M/S SAMPARK INDUSTRIES LTD
P-2/5, SITE-IV, UPSIDC INDL AREA, GR.NOIDA

[2]SHRI S. VIKAS AGGARWAL DIRECTOR
M/S SAMBARK INDUSTIRES LTD;-----------

M/S SAMPARK INDUSTRIES LTD Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 506-507 /2008 –SM[BR]** dated **14.2.2008**

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. NOIDA
   B-123, SECTOR 5, NOIDA.
2. Adv. / Consult
   MR.S.D.GAUR
   SB-108, SHASTRI NAGAR, GHAZIABAD.
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)

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

Excise Appeal No. 1864-1865 of 2006-SM (BR)

(Arising out of Order-in-Appeal No. 63-64/CE/Noida/06 dated 17.3.06 passed by the Commissioner (Appeals), Central Excise, Noida)

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?**	
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?**	
4.	**Whether order is to be circulated to the Departmental authorities.**	

M/s Sampark Industries Ltd. Appellant
Shri Vikas Aggarwal, Director

Vs.

CCE, Noida Respondent

Appearance:
Shri S.D. Gaur, Consultant - For appellant
Shri S. Gautam, SDR - For respondent

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

Date of Hearing: 14.2.08

Final Order No. 506-507/08-SM(BR) dated 14.2.08

Per S.S. Kang:

Heard both sides.

2. The appellant filed these appeals against the impugned order whereby the demand is confirmed in respect of the finished goods found short and in respect of inputs on which credit has been taken were also found short. The finished goods which were in excess to the balance recorded in the statutory record confiscated and allowed the same to be released on payment of redemption fine and penalties were imposed.

3. The contention of the appellant is that there is no evidence on record that the appellant cleared the inputs as such or the finished goods without payment of duty. The contention is that inputs on which credit has been taken might have been issued for processing. In respect of the finished goods which were found in excess, the contention is that the same is due to accounting error. The contention of the Revenue is that at the time of physical verification, the appellant failed to give any explanation regarding the excess and shortages. The Revenue

submitted that even reply to show-cause notice, the appellant had not contested the demand of duty or proposal for confiscation on merits. The only plea raised by the appellant in the show-cause notice is that as the duty has been paid, therefore, there is no need to issue the show-cause notice.

4. In respect of the appeal filed by the Director Shri Vikas Aggarwal, the contention of the appellant is that there is no finding in the adjudication order or in the order in appeal regarding his commission or omission with intent to evade payment of duty. It is also submitted that in his statement he nowhere admitted that the goods were cleared without payment of duty, therefore, the penalty on the Director is not sustainable.

5. The Revenue's contention is that being a Director he was responsible for proper accounting of the inputs as well as finished goods, therefore, penalty was rightly imposed.

6. In this case, on physical verification which is not in dispute certain inputs on which credit has been availed and certain quantity of finished goods were found short the demand is confirmed in respect of the goods found short. The finished goods which were found in excess were confiscated and the same were allowed on payment of redemption fine. I find that Hon'ble Bombay High Court in the case of **Kirloskar Brothers Ltd. Vs. Union of India & Others** reported in 1988 (34) ELT 30 held that unaccounted goods found short in factory are liable for confiscation. Further, I find that even in reply to show-cause notice, the appellant had not explained shortage or excesses rather in reply the appellant simply submitted that since the duty has been paid, therefore, no need for issuance of show-cause notice. In view of this, I find no merit in the appeal filed by M/s Sampark Industries Ltd. the same is dismissed.

7. In the appeal filed by Shri Vikas Aggarwal, Director, I find that in the impugned order or in the adjudication order there is no finding regarding ~~no~~ omission or commission with intent to evade payment of duty on his part, therefore, penalty imposed on Shri Vikas Aggarwal, Director is set aside and the appeal of the Director is allowed. The appeals are disposed of as indicated above.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM