

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/962 /2006-SM[BR]

Date 04/04/2008

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

To :
M/S KAISER IND LTD.
371-A,MIE,BAHADURGARH,HARYANA
M/S KAISER IND LTD.

Appellant
Vs
Respondent

CCE,ROHTAK

I am directed to transmit herewith a certified copy of **Final order No. 547 /2008 -SM[BR]** dated 9.1.2008
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

CCE,ROHTAK

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 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)

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

E/Appeal No.962/2006-SM

(Arising out of order in appeal No.479-480/GRM/RTK/2005 dated 27.12.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Gurgaon)

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?
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?

M/s Kaiser Industries Ltd

Appellant
(Rep. by Shri K.K. Anand, Advocate)

Vs

CCE, Rohtak, Delhi-V)

Respondent
(Rep. by Shri S. Gautam, DR)

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

Date of Hearing: 9.1.2008

Per P.K. Das:

Final Order No. 547/2008-SM(BR)

The relevant facts of the case in brief are that the appellants are engaged in the manufacture of Emulsifiers classifiable under sub heading No. 3402.90 of the Schedule to the Central Excise Tariff Act, 1985.

2. On 29th July, 2004, the Central Excise officers conducted stock verification at appellants factory and detected shortage and excess of finished goods and raw material. Shri Ashok Sachdeva, Factory Manager in his statement admitted the discrepancies and stated that the dealing person Shri Sanjeev Mandal will explain, who was absent. However, the appellant deposited the duty of Rs. 2,02,270/- on the date of detection on shortage. A show cause notice dated 29th October, 2004 was issued proposing to appropriate the amount of duty deposited by the appellants and to confiscate the seized goods found excess and to impose penalty upon the appellant and its Manager Shri Ashok Sachdeva. The adjudicating authority confirmed the demand of duty on the shortage and appropriated the deposit made by the appellants and also imposed penalty of equal amount under Section 11-AC of Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. He also confiscated the excess goods and imposed redemption fine of Rs. 2 lakhs and penalty of Rs.25,000/- and also imposed penalty of Rs.15,000/- upon the factory manager. The Commissioner (Appeals) modified the adjudication order in as much as, redemption fine and penalty were reduced to Rs. 1 lakh and Rs. 10,000/- respectively and also set aside the penalty on the factory manager.

3. The learned Counsel strongly contested the demand of duty on shortage and confiscation of excess goods and penalty. He submits that the dealing person was absent and therefore, records were not maintained properly. He further submits that it is revealed from record that there was no shortage and excess of goods. He further submits that there is no clandestine removal and therefore, penalty under Section 11AC is not justified. He relied upon the decision of the Hon'ble Madhya Pradesh High court in the case of Supreme Industries Ltd Vs CESTAT New Delhi reported in 2007 (214) ELT 187 (MP).

4. The learned DR on behalf of the Revenue reiterates the finding of the Commissioner (Appeals). He submits that there is excess and shortage of raw material and finished goods. He submits that the representative of the appellant could not properly explain on the shortage and excess of goods and therefore, payment of duty, imposition of penalty and redemption fine are correct. He relied upon the decision of the Tribunal in the case of International Engg & Mfg Ser ices Pvt Ltd Vs CCE Jaipur reported in 2001 (135) ELT 551.

5. After hearing both the sides and on perusal of record, I find in the show cause notice that it is proposed to appropriate the duty of Rs. 2,02,270/- which was deposited by the appellants voluntarily. I find that there is a shortage and excess of goods detected during stock verification and the appellants deposited the duty on the shortage. There is no material

on record that duty was paid under protest. It is rightly proposed in the show cause notice to appropriate the said amount. The submission of the learned Advocate in respect of demand of duty on shortage of goods is not sustainable. It is seen that the appellants explained that due to absence of the dealing person, records were not properly maintained and the goods were awaiting testing. In any event, there is no material available for alleged clandestine removal of goods and therefore, Section 11AC of the Central Excise Act 1944 cannot be invoked.

6. Regarding the excess material, it is alleged in the show cause notice that the appellants did not maintain Central Excise records properly as required under Rule 10 of Central Excise Rules, 2002, and the appellant explained the reasons as stated above. The learned Advocate relied upon the decision of the Hon'ble High Court of Madhya Pradesh in the case of Supreme Industries Ltd (supra) held that non-account in the RG.I register, confiscation and penalty are not sustainable under Rule 173Q of Central Excise Rules, 1944. I find that the Tribunal in the case of International Engg & Manufacturing Services Pvt Ltd Vs Commissioner reported in 2001 (135) ELT 551 (T) held that goods were liable to confiscation under Rule 173-Q of the erstwhile Rules, as the appellant had not entered the finished goods in the statutory records, which was upheld by the Hon'ble Supreme Court as reported in 2002 (139) ELT A-88 (SC). Therefore, the confiscation of excess goods not entered in RG.I is justified. In the present case, the show

- cause notice proposed penalty for non-maintenance of records properly under Rule 10 of Central excise Rules, 2002 and therefore, penalty under Rule 27 of the said Rules may be imposed. Accordingly, I set aside the penalty of Rs. 2,02,270/- under Section 11AC of the Act and Rule 25 of the Rules and impose penalty of Rs.5,000/- under Rule 27 of the Rules and reduce the redemption fine to Rs.20,000/- . The appeal is disposed of in the above manner, with consequential relief.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)