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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/389 /2007,391 /2007 – SM[BR] Date 29/09/2008

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

To :
C.C.E. KANPUR
117/7, SARVODYA NAGAR, KANPUR (U.P.)

C.C.E. KANPUR Appellant
Vs
M/S GANPATI EDIBLES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1330 -1331 / 2008- **SM[BR]** dated 16.9.2008 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 GANPATI EDIBLES LTD.
VISAYAKPUR, RANIA, KANPUR(DEHAT) & SHRI KAILASH CHAND MALPANI DIRECTOR OF THE UNIT Kanpur
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, 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

2. M/S GANPATI EDIBLES LTD.
VISAYAKPUR, RAINA, KANPUR (DEHAT) & SHRI KAILASH CHAND MALPANI DIRECTOR OF THE UNIT Kanpur

CUSTOMS EXCISE & SERVICE TAX APPELLATETRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 16.9.2008

E/Appeal No. 389 and 391/2007-SM(BR)

(Arising out of Order-in-Appeal No. 574-575-CE/APPL./KNP/2006 dated 22.12.2006 passed by the Commissioner (Appeals) Customs & Central Excise, Kanpur)

For approval and signature:

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

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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 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? Yes

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CCE Kanpur — Appellant/Applicant
(Rep. by Shri Sansar Chand, DR for the Appellant)

Vs.

1. M/s Ganpati Edibles Ltd. — Respondent
2. Shri Kailash Chand Malpani, Director — (None for the Respondents)

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

Final Order No. 1330-1331/08-SM(BR)

Per: P.K. Das

Revenue filed these appeals against the order of the Commissioner (Appeals). Heard the ld. DR on behalf of the Revenue. None appeared on behalf of the Respondents inspite of issue of notice.

2. The relevant facts of this case in brief are that the Respondents are manufacturer of Refined Oil, Upgraded Oil and Fatty Acid classifiable under heading No. 1502 and 3823 of the Schedule to the Central Excise Tariff Act, 1985. On 29.7.2004, the Central Excise Officers visited the Respondent's factory and conducted the stock verification, ascertained shortage of raw material and finished goods. The Respondent immediately deposited the duty of Rs.1,16,900.00. The Adjudicating Authority confirmed the demand of duty of Rs.1,16,900.00 and appropriated the said amount as deposited by them. He imposed penalty of Rs.25,000.00 and Rs.10,000.00 on Respondent No. 1 and 2 respectively. Respondents filed appeal before the Commissioner (Appeals). By the impugned order, Commissioner (Appeals) set-aside penalties. Hence the Revenue filed these appeals.

3. After hearing the ld. DR and on perusal of the records, it is seen that the Respondent accepted the shortage and stated that the goods were removed without payment of duty. So, it is a case of clandestine

removal of goods and penalty under Section 11 AC of the Act is warranted. The Hon'ble Delhi High Court in the case of Commissioner of Central Excise Vs. Malbro Appliances P. Ltd reported in 2007 (208) ELT 503 (Del.) held that first proviso to Section 11 AC (1) of the Act providing penalty of 25% of duty, if duty is deposited within 30 days of the order. In the present case, the Respondent deposited the duty before issue of show cause notice and penalty is imposable of 25% of duty. Accordingly, the Order of the Commissioner (Appeals) against setting aside of penalty on Respondent No. 1 is not sustainable and Adjudicating Order is restored and penalty is enhanced from Rs. 25,000.00 to Rs.29,000.00 (i.e. 25% of duty approx.).

4. However, I find there is no material available for imposition of penalty on Respondent No. 2 who in his statement stated that the goods were cleared by the staff. It appears that he had no knowledge of removal of goods. So, the appeal against the Respondent No. 2 is rejected. The appeal against Respondent No. 1 is disposed of in the above terms.

(Dictated and pronounced in the open court).

(P.K. Das)
Member (Judicial)

K. Gupta