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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/2278/2006 – SM[BR] & E/ 2906 – 2907 / 2006-SM[BR] Date 29/09/2008

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

To :
CCE,RIAPUR
CE BUILDING,TIKARAPARA,
RAIPUR(CG)
CCE,RIAPUR Appellant

Vs

M/S PRAKRITI IND Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1342- 1344 / 2008 – **SM[BR]** dated 5.8.2008

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 PRAKRITI IND
9B,INDL AREA,RAWABHATA,RAIPUR(CG)
[2]M/S MOHINI INDUSTRIES 9A, INDUSTRIAL AREA RAWABHATA, RAIPUR[C.G]
[3] M/S AMBATTUR PETROCHEM LTD. 17& 19, INDUSTRIAL AREA, RAWABHATA, RAIPUR-493221
2. Adv. / Consult SHRI BIPIN GARG Adv.
b-1 /1289 –A, VASANT KUNJ NEW DELHI 110070.

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
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Assistant Registrar
(SM Appeal Branch)

N THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

E / Appeal No.2278/06 with E/2906-2907/06-SM (BR)

[Arising out of Order-in-Appeal No.69/RPR-I/2006 dated 31.03.2006, Order-in-Appeal No.70/RPR-I/2006 dated 31.3.2006 and Order-in-Appeal No.68/RPR-I/2006 dated 31.03.2006 passed by the Commissioner of Central Excise (Appeals), Raipur]

Date of Hearing/ Decision:05.08.2008

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 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? : 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? : Yes

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CCE, Raipur ....Appellant

[Rep. by Shri S.Gautam, DR]

Vs.

(1) M/s. Prakriti Industries
(2) M/s. Ambattur Petrochem Ltd.
(3) M/s.Mohini Industries ...Respondent

[Rep. by Shri Bipin Garg, Advocate]

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

Final Order No. 1342-1344/08-SM (BR)/Dated:05.08.2008

Per P.K. Das:

Common issue is involved in these appeals and, therefore, all are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the Respondents are engaged in the manufacture of Chlorinated Paraffin, Choloxylenol, Monochlorophenol Dichlorobenzene, Chlorinated Crysol and Hydrochloric Acid classifiable under Chapter 38, 29 and 28 of the Schedule to the Central Excise Tariff Act, 1985. On 2nd Feb., 2001, the Central Excise Officers visited the factories of the Respondents and conducted stock verification. The said officers noticed variation in physical stock of raw materials and finished goods compared to book balance. The said officers recovered a record containing 'Labour Bill of Sanjay Singh' from the premises of Respondent No.1. They recorded the statement of Shri Sanjay Singh, who employed labours for loading and unloading of goods at the factories of the Respondents. They also recorded the statement of Shri Prasoon Kumar, Proprietor of Respondent No.1. No statement was recorded to the representative of the other respondents. Three show cause notices were issued separately to the Respondents proposing demand of duty on the basis of the "Labour Bills

of Shri Sanjay Singh". The Adjudicating Authority confirmed the demand of duty and imposed penalty of equal amount along with interest by separate Adjudication Orders. The Commissioner (Appeals) set aside the Adjudication Orders and allowed the appeals filed by the Respondents. Hence, the Revenue filed these appeals before the Tribunal.

3. Ld. DR on behalf of the Revenue reiterates the grounds of appeal filed by the Revenue. He submits that all the three Respondents are inter-related and, therefore, the demand of duty on the basis of Labour Bill of Shri Sanjay Singh is justified. He further submits that the statement of Shri Sanjay Singh and the labour bills are corroborative with the shortage and excess of raw materials and finished goods found during the stock verification in the Respondents' factory. He also submits that even it is assumed but not admitted that it is a case of only inter-transfer of goods, then such act of omission and commission on the part of Respondents warrant imposition of penalty under Rule 173Q of the erstwhile Central Excise Rules, 1944. He further submits that even it is a case of inter-transfer of finished goods and raw materials from one factory to another factory, the Respondents were required to make suitable entries in their books, which was not done. Thus, it is a clear case of clandestine removal of the finished goods and raw materials.

4. Ld. Advocate on behalf of the Respondents reiterates the findings of the Commissioner (Appeals). He submits that Shri Sanjay Singh is loader and is being paid in cash on the basis of work done. He also submits that the Proprietor of the Respondent No.1 in his statement denied that no bill has been submitted by Shri Sanjay Singh and the payments had been done on the basis of their records. He also submits that Sanjay Singh in his statement stated that he is illiterate person and the bills were prepared by his wife on his behalf, which is not corroborative with any evidence. He further submits that no inquiry was conducted on the Respondents Nos.2 and 3. He relied upon the decsiiosn of the Tribunal as under:-

(i) T.G.L. Poshak Corporation Vs. CCE, Hyderabad
2002 (140) ELT 187 (Tribunal-Chennai)

(ii) Chemco Steels Pvt. Ltd. Vs. CCE, Hydereabad
2005 (191) ELT 856 (Tribunal-Bang.)

(iii) Arch Pharmalabs Limited Vs. CCE, Hyderabad
2005 (182) ELT 413 (Tribunal-Bang.)

(iv) Essvee Polymers (P) Ltd. Vs. CCE, Chennai
2004 (165) ELT 291 (Tribunal-Chennai)

(v) Kashmir Vanaspati (P) Ltd. Vs. CCE
1989 (39) ELT 655 (Tribunal)

(vi) S.T. Texturiser Vs. CCE, Surat-I
2006 (200) ELT 234 (Tribunal-Mumbai)

5. After hearing both the sides and on perusal of the records, it is seen that the Respondents were all SSI units, had been paying concessional rate of duty under Notification No.9/2000-CE dated 1.3.2000. On 2.2.2001, that the central excise officers visited the factory of all the Respondents and conducted stock verification. There was variation in physical stock of raw materials and finished goods compared to the book balance. The adjudicating authority observed that separate show cause notices were issued against the shortage/excess of stock verification. Ld. Advocate on behalf of the Respondents submits that the said proceedings are still pending. The present proceedings are initiated on the basis of "labour bills of Sanjay Singh" recovered from the premises of the Respondent No.1. The demand of duty was raised on all these Respondents on the basis of the labour bills for the period from October, 2000 to December, 2000. It appears from the show cause notice that no inquiry was conducted to the Respondents No.2 and 3 for demanding duty on the basis of labour bills found in the premises of Respondent No.1. The Adjudicating Authority observed that the clandestine removal of the goods was corroborated from the difference in stock detected during stock verified. It is seen that the demand of duty is for the period October, 2000 and December, 2000 and stock verification was done on 2.2.2001. There is time gap more than one month between the date of

stock verification and period of demand of duty. Further, the proceedings of shortage of goods have not been placed in the present proceedings. Furthermore, there is no material placed by Revenue to corroborate the variation of stock as on 2.2.2001 with demand of duty for October, 2000 to December, 2000. So, I do not find any force in the finding of Adjudicating Authority. The Commissioner (Appeals) dropped the proceedings. The relevant portion of the Order-in-Appeal No.69/RPR/I/2006 dated 31.03.2006 of Commissioner (Appeals) is reproduced below:-

> "From this it is evident that the variation in stock noticed at the time of stock taking was negligible as compared to the alleged quantities that have been produced. Further, the departmental officers have not come out across any document to indicate variation in stocks to that extent. Though the raw materials except for chlorine are controlled, commodities but such huge quantities of raw materials would not be freely available in the market and would have to be procured by the appellants from well established units which would be received under proper documents. Such large quantities of chlorine gas cannot be obtained from the open market as the procurement of chlorine gas requires fulfilment of various legal formalities. Therefore, it is doubtful whether the appellants and the other two units could have manufactured such

large quantities of goods in excess of the production as mentioned in their records. Thus, the clandestine production of such large quantities of goods in three months is not corroborated by any evidence of purchase of raw materials, etc. Apart form this, there is no evidence of sale of such goods and also of cash or financial transactions, which would lead one to believe clandestine manufacture and clearance of goods. In view of this, I am of the opinion that on considering the evidence in totality, the preponderance of probability indicates that no extra production of goods had taken place and consequently the clearance. Even the removal of raw materials does not get proved."

6. It is seen from the show cause notice that Shri Prasoon Kumar, Proprietor of the Respondent No.1 in his statement stated that he has employed Shri Sanjay Singh as loader and is being paid in cash on the basis of assessment of work done. He further stated that no bill has been submitted by Shri Sanjay Singh and the payment has been done on the basis of their records. When specifically asked about the bills found in the factory premises, he stated that Shri Sanjay Singh has signed the bills during the panchnama proceedings and he is not capable of writing. DR submits that the three Respondents are inter-related. Shri Prasoon Kumar in his statement stated that regarding issuance of invoice for the clearance

made to the other two companies and shown in the bills that a full truck load of consignments of finished goods were taken to other units for loading, but invoices were issued in each case. In the appeal of the Revenue, it is contended that even it is assumed but not admitted, that this is only a case of inter-transfer, then penalty is warranted. The Commissioner (Appeals) observed that there is no material placed by the Revenue that the goods were cleared outside of the factory to the customers.

7. The Tribunal in the case of T.G.L. Poshak Corporation (supra) held that charge of clandestine removal based merely on note books maintained by workers is not sustainable unless supported by corroborative evidence with regard to purchase of raw material, manufacture of final goods, flow-back of money, or any seizure or statements from purchasers. In the case of Chemco Steels Pvt. Ltd. (supra), it has been held that Private register and packing slips maintained by shift supervisors/operators not to be the sole basis for establishing clandestine removal in absence of corroborative evidence like clandestine purchase of raw materials, excess use of electricity, etc. demand is not sustainable. In the case of Essvee Polymers (P) Ltd. (supra), it has been held that mere slips or statements are not sufficient for confirmation of demand and allegation of clandestine removal, evidence in the form of

receipt of raw materials, shortage thereof, excess use of electricity, excess/shortage of inputs in stock, flowback of funds, purchase of final products by parties alleging receipt and removal of goods, etc. necessary.

8. I find that in the present case, the Commissioner (Appeals) rightly observed that such larger quantity of Chlorinated gas cannot be obtained from the open market as the procurement of Chlorine gas requires fulfilment of various legal formalities. I also noted that no inquiries were conducted on the Respondent No.2 and 3. There is no material that the Respondents had knowledge of maintenance of Labour Bill of Sanjay Singh. As such, I do not find any infirmity in the order of the Commissioner (Appeals). Accordingly, the impugned orders are upheld and the appeals are dismissed.

Order dictated & pronounced in open court on 5.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.