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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/201 /2007 – SM[BR]   Date 16/10/2008

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

To :
M/S DEV PRIYA PRODUCTS LTS
VILLAGE - SAINI, 8TH K.M. MAWANA ROAD,
MEERUT.

M/S DEV PRIYA PRODUCTS LTS   Appellant
Vs
C.C.E.MEERUT I   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1373 / 2008 - **SM[BR]** dated 3.10.2008 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.MEERUT I
MANGAL PANDEY NAGAR, MEERUT.
2. Adv. / Consult
MR.PRAVEEN SHARMA
KF-84, KAVI 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. 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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K. Puram, New Delhi - 110066

COURT-IV

Date of hearing/pronouncement:3.10.2008

Central Excise Appeal No.201 of 2007

Arising out of the order in appeal No.229-CE/MRT-I/2006 dated 31.10.06 passed by the Commissioner, Central Excise (Appeals), Meerut I.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellants | Respondent

M/s Dev Priya Products Ltd. vs. C.C.E., Meerut I

Appearance:

Shri Praveen Sharma, Advocate for the appellant(s) and
Shri K.K. Goyal, Authorized Departmental Representative (Jt.CDR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 1373/08-SMC BRD

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 229-CE/MRT-I/2006 dated 31.10.06.

2. Heard both sides.

3. The premises of the appellant was visited on 28.3.2005 and stock taking was undertaken and excess stock of 43.718 MTs. (40.631 MT in rolls and 03.087 MT in sheets) valued at Rs.6,33,343/- was found. There was also shortage of inputs on which cenvat credit was taken and the ~~central excise~~ cenvat involving amounting to Rs.76,001.28 stands paid. There was no dispute regarding the same. The original authority ordered confiscation of the excess

goods and imposed redemption fine of Rs.1,60,000/- and imposed a penalty of Rs.50,000/- on the appellant. Commissioner (Appeals) upheld the order of the original authority.

4. Learned Advocate submits that 26.3.2005 was Holi and 27th was Sunday and some employees in the packing section were on leave. The excess found stock was thus not packed; they were accounting the goods in their register only after packing was completed. He also submits that on the very same day, Shri Sushil Rastogi, the authorized signatory explained the above reasons for the shortage. He also submits that confiscation was not justified as there was no intention to remove the goods clandestinely. He, therefore, seeks that confiscation and penalty be set aside. He relies on the decision in the case of Supreme Industries Ltd. – 2007 (214) ELT 187 (M.P.) in support of his above plea:

5. Learned Jt.CDR submits that obligation to account for is a strict liability. Once the goods are not accounted for, the same are liable to confiscation and mens rea is not relevant. He relies on the following decisions in support of his argument:

a) *PNP Castings (P)Ltd. vs. C.C.E., Lucknow – 2006 (194) ELT 250 (Tri – Del.)*
b) *Sharadha Forge Pvt. Ltd. vs. C.C.E., Rajkot – 2005 (179) ELT 336 (Tri- Mumbai)*
c) *C.C.E., Vapi vs. Modison Ltd. – 2006 (203) ELT 521 (Tri-LB)*
d) *Kirloskar Brothers Ltd. vs. UOI – 1988 (34) ELT 30 (Bom.)*
e) *Garg Cotex Pvt. Ltd. vs. C.C.E., Rohtak – 2007 (217) ELT 310 (Tri.-Del.)*

The learned Jt.CDR also submits that it cannot be a case that only employees of packing section were on leave while the other sections were working.

6. I have carefully considered the submissions of both sides. I find that the quantity of finished goods not accounted for at the time of visit by the officers is quite substantial. About 190 MTs. of waste paper was found to be over and above the stock of waste papers recorded in their accounts , which

according to the learned Advocate constitute only 2.7% of the total stock of waste papers.

7. The obligation to account for the raw materials and manufactured goods is a strict one. This is a preventive measure. Non-accountal of substantial quantity of finished goods and raw materials are admitted. The explanation offered for such excess stock found is not convincing though there are mitigating circumstances. They failed to maintain proper account and Rule 10A of Central Excise Rules, 2002 is attracted. In view of the above, I hold that confiscation was warranted.

8. Having regard to the facts and circumstances of the case while upholding the confiscation, I reduce the redemption fine from Rs.1,60,000/- (rupees one lac sixty thousand) to Rs.75,000/- (rupees seventy five thousand). I reduce the penalty from Rs.50,000/- (rupees fifty thousand) to Rs.2,000/- (rupees two thousand).

(Dictated and pronounced in the Court)

(M. Veeraiyan)
Member (Technical)

scd/