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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/3695/2006-3696/2006 – SM[BR] Date 16/10/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S RATAN INDUSTRIES PVT LTD
2. SIDDHARTH GOEL,DIRECTOR

10/22, KATRA WAZIR KHAN, RAM BAGH, AGRA(UP)

M/S RATAN INDUSTRIES PVT LTD — Appellant

Vs

C.C.E.KANPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1374 -1375 /2008- SM[BR] dated 4.9.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

C.C.E.KANPUR

117/7, SARVODAYA NAGAR, KANPUR.
2. Adv. / Consult
MR.R.SANTHANAM

C-3/210, JANAK PURI, NEW DELHI - 110 058.

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)

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

Excise Appeals Nos.3695-96 of 2006 –SM (BR)

[Arising out of Order-in-Appeal No.349 & 350/CE/APPL/KNP/06 dated 31.07.2006 passed by the Commissioner of Central Excise (Appeals), Kanpur (U.P.)]

Date of Hearing/ Decision:04.09.2008

For approval and signature:

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

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

(1) M/s. Ratan Industries (P) Ltd.
(2) Mr. Sidharth Goyal , Director ...Appellants
[Rep. by Shri R. Santhanam, Advocate]

Vs.

CCE, Kanpur ....Respondent
[Rep. by Shri K.K. Goyal, Jt.CDR]

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

Final Order No.1374-75..../Dated:4.9.08 SM-(BR)

Per P.K. Das:

Both the appeals are arising out of a common order and, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that on 5.11.2004, the Central Excise Officers visited the Appellants' factory and conducted stock verification. The said officers ascertained shortage of finished goods involving central excise duty of Rs.1,50,451/-. Shri Siddhartha Goyal, Director of the Appellant Company admitted the shortage and debited the duty of Rs.20,000/- vide PLA Entry No.02 dated 5.11.2004. The Adjudicating Authority confirmed the demand of duty of Rs.1,50,451/- and appropriated the said amount of Rs.20,000/- as deposited by them and also imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002 separately for contravention of the Rules along with interest. He also imposed penalty of equal amount to duty on Shri Siddhartha Goyal, Director of the Appellant Company. The Commissioner (Appeals) set aside the penalty under Rule 25 of the Rules on the Appellant No.1 and reduced the penalty to Rs.1,00,000/- on the Appellant No.2. Hence, the Appellants filed these appeals.

3. Ld. Advocate on behalf of the Appellants submits that Shri Siddhartha Goyal, Director of the Appellant Company had reached just 18 years at the relevant time and his father was died on 30.09.2004 and, therefore, he was not in a normal position to record the statement. He further submits that the statements were recorded under duress and coercion and retracted by letter dated 12.10.05. It has not been

considered by the Authorities. He also submits that no stock taking was conducted and entry was done on the average weight and eye estimation.

4. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that Respondent No.2, Director of the Company admitted that the goods were removed clandestinely and, therefore, demand of duty and penalty are justified. He further submits that the retraction of statements was not placed before the Adjudicating Authority. In any event, the retraction was done after more than 2 months and, therefore, it is an afterthought.

5. After hearing both the sides and on perusal of the records, it is seen that the Respondent No.2, Director of the Company admitted the shortage and paid a sum of Rs.20,000/- on the spot. It has been admitted that the finished goods had been removed clandestinely from the factory premises without issuing notice and without payment of central excise duty due thereon. Ld. Advocate heavily relied upon the retraction of the statements by the Respondent No.2. The Adjudicating Authority observed that the said letter was not placed before the Adjudicating Authority. I agree with the submission of the ld. DR that the Appellants have not explained long delay of retraction of the statement more than 2 months. Therefore, it is rightly observed that the contents of the letter dated 12.1.2005 is an afterthought. It is a case of clandestine removal of the goods and, therefore, imposition of penalty under Section 11 AC of the Central Excise Act is justified. So, I do not find any merit in the

submission of the ld. Advocate and the demand of duty and penalty against Appellant No.1 are upheld. However, considering the facts and circumstances of the case of the Director, Respondent No.2 herein penalty is reduced to Rs.25,000/- on Appellant No.2. The appeal of Appellant No.1 is rejected. The appeal of the Appellant No.2 is disposed of in the above terms.

Order dictated & pronounced in open court on 4.9.2008.

(P.K. Das)
Member (Judicial)

Ckp.

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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

Date :03/08/2010

MISC Order No. 202 – 203 / 2010 –SM[BR]

Application E / ROM / 19 -20 / 2009 –SM[BR]IN

Appeal No. E/3695 – 3696 / 2006 –SM[BR]

1. Appellant

1. M/S RATAN INDUSTRIES PVT LTD
2. SHRI SIDHARTH GOYAL , DIRECTOR
10/22, KATRA WAZIR KHAN, RAM BAGH,
AGRA(UP)

2. Respondent

C.C.E.KANPUR

117/7, SARVODAYA NAGAR, KANPUR.

3. Adv / Consult :
MR.R.SANTHANAM

C-3/210, JANAK PURI, NEW DELHI - 110 058.

4. C.D.R
5. Bar Association, CESTAT, New Delhi.
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi - 110003
8. Company Law Institute of India Pvt Ltd, No.2 (OLD No.36), Vaithyaram Street, T. Nagar, Chennai 600017
9. Deeparchie Publications, M-93, Marg. 43, Saket, New Delhi - 110017.
10. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi -110005
11. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
12. LAWCRUX Advisors (P) Ltd, Law House, 1-8, Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd, Unit No. 1, 2nd Floor, Vasant Arcade Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard File

Assistant Registrar
(SM Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

IN CHAMBER

Excise ROM Application Nos. 19-20 of 2009-SM in Excise Appeal Nos. 3695-3696 of 2006-SM

DATE OF HEARING : 29.07.2010
DATE OF DECISION : 29.07.2010

(i) M/s Ratan Indus. (P) Ltd. ..... **Applicants**
(ii) Mr. Sidharth Goyal, Director (Rep by Sh. R. Santhanam, Adv.)

VERSUS

CCE, Kanpur ..... **Respondent**
(Rep by Sh. R.K. Gupta, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT

Misc ORAL ORDER NO. 202 - 203 / 2010 SM (BR)

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard the learned advocate for the applicants and the learned DR for the respondent.

2. The contention of the applicants is that, the appeals filed by the applicants against the order passed by the lower authority were dismissed under order dated 04th September, 2008 without considering a very important point which was canvassed on behalf of the applicants. It is the contention on behalf of the applicants that, it is settled law by a large number of judgments of the Tribunal that mere stock taking by eye estimation or estimation using the average

method and without taking actual weighment of the goods and accusing the assessee of shortage of the goods to justify the allegation of clandestine removal is not permissible and onus to prove the clandestine removal always lies upon the Department and in every such case there has to be positive evidence in support of such allegations. In this regard, reference is made to the decisions in the matter of :

(i) **Comm. Of C.Ex., Vadodara vs Air Command India Ltd.,**
2008 (230) ELT 152;

(ii) **Banco Products (India) Ltd. vs CCE&C, Vadodara,**
2008 (232) ELT 762;

(iii) **CCE, Indore vs Kapil Steel Ltd.,**
2008 (226) ELT 627;

(iv) **U.P. Alloys P. Ltd. vs CCE, Kanpur**
2007 (213) ELT 412;

(v) **CCE, Siliguri vs Asha Ispat P. Ltd.**
2006 (205) ELT 324;

(vi) **CCE, Indore vs Devas Metal;**
2006 (193) ELT 121;

(vii) **Shivkripa Ispat P. Ltd. vs CCE, Nashik**
2006 (194) ELT 66;

(viii) **Satpushp Steels P. Ltd. vs CCE, Jaipur**
2006 (196) ELT 105:

(ix) **Jindal Texofab Ltd. vs CCE, Ahmedabad**
2009 (233) ELT 241.

3. To the specific query, as to whether the same ground was raised before the Tribunal at the time of passing the order dated 04th September, 2008, it is submitted on behalf of the applicants that, it was, in fact, raised and brought to the notice of the Tribunal.

4. Perusal of the order dated 04th September, 2008 does not lend any support to the above contentions on behalf of the applicants. What is pertinent to note is that, neither the applicants had filed any affidavit before the Hon'ble Member who had disposed of the matter on 04th September, 2008 specifying that the point in question ~~which~~ was specifically raised along with the citations and yet it was not considered by the Tribunal nor even in the ROM applications there is any categorical assertion to that effect. Whether particular point was raised before the Tribunal or not is a question of fact which should be established by the procedure known to law and which has sanction of law. It is settled law by virtue of judicial pronouncement by the Apex Court that whenever party wants to dispute any fact recorded in the order or that they want to contend that the particular point was raised, yet it was totally ignored by the authority before whom such point was raised, has to file an affidavit to that effect before the same authority immediately after the pronouncement of the order. The applicants have not complied with the said requirement.

5. Even in the applications there is no statement to the effect that the said point was specifically raised but was not considered by the Tribunal.

6. In view of the above, I do not find any ground for allowing the applications in the matter in hand and hence the same are dismissed. Applications stand disposed of accordingly.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

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