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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/103 /2007 – SM[BR] Date 10/11/2008

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

To :
M/S SUPREME STRIPS LTD.

12, OKHLA INDUSTRIAL AREA, PHASE - I, NEW DELHI.

M/S SUPREME STRIPS LTD. Appellant

Vs

C.C.E. JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1417 /2008- SM[BR]** dated 11.9.2008 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. JAIPUR

   N.C.R.BUILDING, STATUE CIRCLE, JAIPUR.
2. Adv. / Consult

   MR.SIDHARTHA SEN, ADVOCATE

   C-5/9, SAFDARJUNG DEVLOPMENT AREA,OPP IIT GATE, N. DELHI.

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)

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

COURT-IV

Date of hearing: 11.9.2008

E/Appeal No. 103/2007-SM(BR)

(Arising out of Order-in-Appeal No. 282(GRM)CE/JPR-I/2006 dated 28.11.2006 passed by the Commissioner of Central Excise, Jaipur).

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?
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?

No.

4. Whether Order is to be circulated to the Departmental authorities?

Yes

M/s Supreme Strips Ltd. — Appellant/Applicant
(Shri Rupender Singh, Advocate)

Vs.

CCE, Jaipur — Respondent
(Shri A.K. Rastogi, DR)

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

Final Order No. 1417/08 - SM(BR)

Per: P.K. Das

The relevant facts of the case in brief are that the Appellant are engaged in the manufacturer of M.S. Joist/Flats classified under chapter 72 of the Central Excise Tariff Act, 1985. On 22-23.08.2001 the Central Excise Officers visited to the Appellants' factory and conducted stock verification The said Officers during the stock verification of finished goods detected shortage involving Central Excise duty of Rs. 7,50,244.00. Shri Anil Sharma, Director of the Appellant Company in his statement stated that the shortage of finished goods might be due to error in weightment at the time of receipt of the production after re-rolling process. They debited duty Rs. 50,000.00 vide in RG-23A Part-II entry No. 295 dated 23.08.2001 and they also deposited an amount of Rs. 1,00,000.00 vide TR 6 Challan No. 13 dated 17.9.2001. A show cause notice dated 13.10.2005 was issued proposing demand of duty of Rs. 7,50,244.00 and to impose penalty alongwith interest.

2. The Adjudicating Authority confirmed the demand of duty of Rs. 7,50,244.00 and appropriated the amounting of Rs.1,50,000.00 as

deposited by them and also imposed penalty of equal amount alongwith interest. Commissioner (appeals) upheld the Adjudicating Order.

3. The ld. Advocate on behalf of the Appellants contented the demand of duty and penalty on merit, as well as on limitation. He submits that no physical verification was conducted and shortage was calculated on eye estimation. He further submits that there is no clandestine removal of the goods. So, the demand of duty is barred by limitation. He relied upon the decision of the Tribunal as under:-

(a) Lovely Food Industries Vs. Commissioner of Central Excise, Cochin reported in 2006 (195) ELT 90 (Tri.-Bang.).

(b) Rivaa Textile Inds. Ltd. Vs. Commissioner of Central Excise and Customs, Surat-I reported in 2006 (197) ELT 555 (Tri.-Mumbai).

4. The ld. DR reiterates the finding of the Commissioner (Appeals). He submits that the Appellant failed to give proper explanation of shortage of goods and, therefore, the Adjudicating Authority rightly held that the goods were clandestinely removed. He also submits that it is a case of clandestine removal of goods and extended period of limitation is invoked.

5. After hearing both the sides and on perusal of the records, it is seen shortage was detected on 22-23.08.2001. The Director of the

Appellant Company explained the shortage of finished goods was due to error in weighment at the time of receipt of the production after re-rolling process. The Commissioner (Appeals) observed that acceptances of shortage and debited duty partly established that they have removed the goods clandestinely without payment of duty. In my view, mere shortage of goods ascertained during stock verification cannot be presumed clandestine removal of goods unless there is any material available therein. So, the finding of the Commissioner (Appeals) is not acceptable.

6. I find hat shortage was detected on 22-23.8.2001 and show cause notice was issued on 13.10.2005 proposing demand of duty and penalty. There is no material available of suppression facts with intent to evade payment of duty and extended period of limitation cannot be invoked.

7. The Division Bench of the Tribunal in the case of Rivaa Textile Inds. Ltd. (supra) held that the Officers visited factory premises on 28.9.1996 for follow up action and drawn panchnama and the dispute is well within the knowledge of the department and show cause notice issued on 27.3.2001 is time barred. In the case of Lovely Food Industries (supra), the Division Bench of the Tribunal held that Department gathered all information on their visit to factory on

5.11.1999 and recorded the statements on the same day and show cause notice issued after a lapse of three years is barred by limitation.

8. In the present case, it is seen that the shortage of goods was detected during stock verification on 22-23.8.2001, within the knowledge of department and show cause notice was issued demanding duty after four years on 13.10.2005 is barred by limitation. So, the demand of duty and penalty ~~is~~ are not sustainable. The appeal is allowed on limitation without going into merits.

(Dictated and pronounced in the open court).

(P.K. Das)
Member (Judicial)

K. Gupta