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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/1401/2006 – SM[BR] Date 12/11/2008

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

To :
C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011

C.C.E BHOPAL Appellant

Vs

M/S K.P POUCHES P LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1445/ 2008- SM[BR] dated 3.11.2008

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 K.P POUCHES P LTD.

46, RAMA ROAD, NEW DELHI
110015

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
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Assistant Registrar

(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Del
P[hi-110066.
Principal Bench, New Delhi.

E/1401/07-SM

[Arising out of Order-in-Appeal No.22-CE/BPL/06 dt.13.1.06 passed by the Commissioner(Appeals), Bhopal)

For approval and signature:

Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

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 would 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 : Department Authorities:

CCE, Bhopal — Appellant

Versus

M/s. K.P.Pouches(P) Ltd. — Respondent

Appearance

Shri S.K.Pandey, Authorised Departmental Representative(DR) For Appellant
None for Respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final

Date of decision: 3.11.08
Order No. 1445/08-SM(BR)

Per Rakesh Kumar:

This is Revenue's appeal against the impugned order dt.13.1.06 passed by Commissioner(Appeals), Bhopal. In this case the Central Excise Officers intercepted a truck No.MP-04K 3679 which was carrying 12 bags of Rajshri Brand Gutkha. The driver of the truck could not produce any supporting documents but stated that the goods had been loaded at M/s. Gurukripa Transport. From M/s. Gurukripa Tranport, it was ascertained that the goods belonged to M/s. Rajshri Gutkha Agency, Bhopal. M/s. Rajshri Gutkha Agency claimed to have purchased the goods from the open market but they could neither produce any documents in support of this claim nor could they produce any duty paying documents. The manufacturer of the goods is M/s. K.P.Pouches Pvt. Ltd. On enquiry with Shri R.P.Tripathi, Director of the manufacturer/respondents, it was confirmed that the goods seized had been manufactured by M/s. K.P.Pouches and that the same were bearing batch No.53 which had been manufactured in March'03. The basis of the Revenue's case is that since M/s. Rajshri Gutkha Agency could not explain as to from whom the goods had been purchased, it has been presumed that the same has been clandestinely cleared by the respondent without payment of duty.

2. None appeared for the respondent and earlier on two occasions also, nobody had appeared. Therefore, the matter is being decided after hearing the Revenue.

3. The learned Departmental Representative pleaded that inability of M/s. Rajshri Gutkha Agency to produce any document in support of their claim that the goods had been purchased from a dealer in cash, is a clear indication that the same had been cleared by the respondents without payment of duty. Ld. DR also pleaded that as per the batch number, the goods had been manufactured in March'03 and the goods had been seized in Bhopal in April'03 but still M/s. Rajshri Gutkha Agency have not been able to produce duty paying documents. He also placed relying upon the Tribunal's judgment in the case of Banphool Ayurved Bhawan Pvt. Ltd. vs CCE, Patna reported in 2001(138)ELT.1385 wherein it was held that when the invoices showing the payment of duty on the goods were not produced by the Appellant, the onus to prove that the goods were cleared on payment of duty gets shifted to the Appellant.

4. In this case, there is no dispute about the fact that the manufacturer of the goods is the Respondent and the batch number of the goods indicates that the same had been manufactured in March'03. The goods had been seized from a truck in Bhopal on 9.4.03 and on enquiry with truck driver, it was found that the goods belonged to M/s. Rajshri Gutkha Agency, Bhopal. I find that though batch number of the goods is printed on the packages, no enquiry has been conducted with the Respondent as to whom the goods of batch number 53 had been cleared. Since the Revenue alleges that the seized goods had been cleared by the respondents without payment of duty, the burden of proving this would

be on the Revenue. In this case other than the inability of Rajshri Gutkha Agency to produce any documents to show the payment of duty, there is no evidence in this regard, while the explanation of Shri Rajesh Chourasia of M/s. Rajshri Gutkha Agency is that they had purchased the seized goods from the open market. The Tribunal's judgment in the case of Banphool Ayurved Bhawan Pvt. Ltd.(supra) does not support the Revenue as in that case the van from which the offending goods had seized belonged to the Appellant who were alleged to have manufactured and clandestinely cleared the goods seized from the van. In view of this, I find no infirmity in the impugned order. The Revenue's appeal is dismissed.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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