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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/3351/2006, 3483/2006 – SM[BR] Date 17/11/2008

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S SUPER SALES (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1461-1462/2008- **SM[BR]** dated 4.11.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

1. M/S SUPER SALES (P) LTD.
2. M/S SUPER SOLES PVT LTD

32/01/12,TAKIA LAL MASJID,BYE PASS ROAD,AGRA.

2. Adv. / Consult SHRIANIL SINGH SISODIA ADV.
76-SHIVAJI NAGAR SHAHGANJ AGRA

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

Excise Appeal Nos. 3351 & 3483 of 2006 (SM)

[Arising out of the Order-in-Appeal No. 140-CE/APPL./Knp/ 2006 dated 13/03/2006 passed by The Commissioner (Appeals), Customs & Central Excise, Kanpur.]

For Approval and signature :
Hon'ble Shri 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, Kanpur — Appellant

Versus

M/s Super Sales (P) Ltd. — Respondent

Vise-versa

Appearance

Shri A.K. Rastogi, Authorized Representative (DR) – for the appellant.

Ms. Asmita Nayak, Advocate – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 04/11/2008.

Final Order No. 1461-1462/08-SM(BR) Dated : 4-11-08

Per. Rakesh Kumar :-

In this case at the time of the officer's visit to the factory of M/s Super Sales (P) Ltd. while shortage of some raw materials in respect of which Cenvat credit has been taken and shortage of some finished excisable goods was found, in respect of some items of raw material and finished goods excess stock was found, which was placed under seizure. Jurisdictional Deputy Commissioner vide order-in-original dated 31/03/05 confirmed the duty demand of Rs. 1,01,174/- in respect of finished goods found short and he ordered confiscation of the raw material and finished excisable goods found in excess of the recorded balance with option to be redeemed a redemption fine of Rs. 1,50,000/-. Beside this imposed penalty of Rs. 25,000/- on M/s Super Sales under Rule 25 (1) of Central Excise Rules, 2002. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide the impugned order upheld the duty demand as well as penalty but set aside the confiscation of the goods. While the revenue has filed appeal against the Commissioner (Appeals)'s order setting aside the confiscation of the seized goods, M/s Super Sales have filed appeal against order of penalty.

2. Heard both the sides.

2.1 The learned counsel on behalf of M/s Super Sales pleaded that there were genuine reasons for shortage of the certain raw material finished goods and excess stock of certain items of finished goods and raw material, that neither the shortage nor the excess was deliberate and that this had happened only for the reason that their accountant was on leave, as the result of which certain stock of finished goods and cenvated raw material, which had been sold had not been entered in the statutory records and certain stock of finished goods and the raw material received from the principal manufacturers for job work had not been entered in the statutory records. Citing Hon'ble Madhya Pradesh High Court's judgment in the case of **Supreme Industries Ltd. vs. CESTAT, New Delhi** reported in **2007 (214) E.L.T. 187**

(M.P.) and Tribunal Larger Bench's order in the case of **Bhillai Conductors (P) Ltd. vs. CCE, Raipur** reported in **2000 (125) E.L.T. 781 (Tribunal)** she emphasized that for attracting to confiscation and penalty under Rule 25 (1) for non-accountal of finished goods, mens-rea is necessary which is not in this case.

2.2 The learned departmental representative pleaded that the shortage of the finished goods as well as cenvated raw material has been accepted by the appellant and it has been accepted by the director of the company that the finished excisable goods and the cenvated raw material, which had been found short, has been removed without payment of duty. Besides this no satisfactory explanation has been given for non-accountal of the finished goods – 2792 pieces of PU sole in the RG-1 register. He cited recent judgment of the Larger Bench of the Tribunal in the case of **CCE, Vapi vs. Modison Ltd.** reported in **2006 (203) E.L.T. 521 (Tri. – LB)**, wherein it was held that for imposing penalty under clauses A,B & C of sub-rule 1 of Rule 173Q which is paramateria with ~~on~~ the sub-rule 1 of Rule 25 of Central Excise Rules, 2002, the mens-rea is not required.

3. I have carefully considered the submissions from both the sides. There is no dispute about the fact that at the time of officer's visit to the unit certain stock of finished goods and certain stock of raw material, in respect of Cenvat credit had been fake, were found short and at that time, the Director of the appellant's company clearly admitted that the same had been sold without payment of duty. I also find that with regard to excess detected in respect of other raw material and finished goods, he could not give any explanation at that time. In view of this following Larger Bench Tribunal's judgment in case of CCE, Vapi vs. Modison Ltd. (Supra) confiscation of the goods found in excess of the balance in the statutory records and imposition of penalty on the assessee is called for. The duty involved on this goods found short is Rs. 1,03,197/- and the value of the goods which were found excess and which have been ordered to be confiscated is Rs. 6,00,678/-. Therefore, the penalty of Rs. 25,000/- is moderate and there is no need to interfere with the Commissioner (Appeals)'s order with regard to penalty. As regards confiscation of the goods, the Commissioner (Appeals)'s order setting aside the order is not correct and hence the same is set aside. However, looking

to the circumstances of this case, redemption fine in lieu of confiscation of Rs. 20,000/- would meet the ends of the justice. The impugned order stands modified, as above. The appeal of M/s Super Sales Pvt. Ltd. is dismissed and the appeal of the Revenue is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK