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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/924 /2007 – SM[BR] E/ CO / 119 /2007 Date 19/11/2008

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant
Vs
GENERAL TRADING CO. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1475 / 2008- **SM[BR]** dated 30.10.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
GENERAL TRADING CO.
MAIN ROAD, MARYAD PATTI BHADOHI (U.P.)
2. Adv. / Consult SHRI S.P.OJHA ADV.
299, BAGHAMBARI HOUSING SCHEME ALLAHAPUR ALLAHABAD [U.P]

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 APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.924/2007-SM, CO/119/07-SM(BR)

(Arising out of order in appeal No. 51/CE/Alld/06 dated 17.5.2006 passed by the Commissioner of Central Excise (Appeals), Allahabad)

For approval and signature:

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

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

No

Yes

CCE, Allahabad — Appellant (Rep. by Shri S.K. Bakshi, DR)

Vs

M/s General Trading Co. — Respondent (Rep. by Shri S.P. Ojha, Advocate)

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

Date of Hearing: 30.10.08

Final Order No. 1475 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents are engaged in the trading of cotton yarn of various types. On 8th March, 2001, the Central Excise officers conducted stock verification at the godown of the respondents and found 65 bags of cotton yarn in cone form weighing 3250 kgs. The respondents produced an invoice No. 597 dated 30.12.2000 showing purchase from M/s Sagar Enterprises. It has been alleged that the representative of the supplier in his statements dated 9.4.2001 and 31.7.2001 stated that they had sold cotton yarn in hank form (exempted goods) and not in cone form (dutiable goods). The Adjudicating Authority confiscated the seized goods and imposed redemption fine of Rs.40,000/- and penalty of Rs.15,000/- on the respondent. The Commissioner (Appeals) set aside the adjudication order. Hence Revenue filed this appeal.

2. After hearing both the sides and on perusal of the record, it is seen that the goods were confiscated and penalty was imposed on the basis of statement of supplier. The learned Counsel on behalf of the respondent drew the attention of the Bench to the copy of Sales-tax Form 31 indicating that they had received the cotton yarn in ~~hank~~ cone form. The Commissioner (Appeals) observed that the respondent is a mere trader and produced the documentary evidence namely invoice and Form 31 issued by Trade TaxDepartment. It is revealed from the documents that the respondent purchased the cotton yarn in cone form. So, confiscation of the goods on the basis of this statement of supplier is not sustainable.

3. The learned DR at this stage points out that there is huge evasion of duty of clearance of dutiable cotton yarn in cone form in the grab of hank form during the relevant period. It is surprising to note that the Investigating officer accepted the statement of the supplier stating that he supplied cotton yarn in hank form exempted goods and penalizing the trader that he had received dutiable cotton yarn cone form without payment of duty, which is

contrary to evidence. The Commissioner (Appeals) followed the decision of the Hon'ble Supreme Court in the case of CCE Vs Decent Dyeing 1990 (45) ELT 201 (SC) wherein it has been held that the purchaser is required to ascertain whether excise duty on the goods has already been paid. In any event, I find that the Commissioner (Appeals) has correctly proceeded on the basis of evidences placed by the respondents. Therefore, I do not find any infirmity in the order of the Commissioner (Appeals). The appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*