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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/2706/2006-SM[BR]   Date 22/05/2008

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

To :
M/S VACMET PACKAGING P LTD
B-5,SITE-A,INDUSTRIAL AREA
SIKANDRA , AGRA

M/S VACMET PACKAGING P LTD   Appellant

Vs

CCE KANPUR   Respondent

I am directed to transmit herewith a certified copy of **Final order No. 802 /2008 –SM[BR]** dated **8.5.2008** passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   CCE KANPUR
   117/7,SARVODAYA NAGAR
   KANPUR
2. Adv. / Consult
   MR. K.K. ANAND ADV.
   A-5, BASEMENT LAJPAT NAGARE-III, NEW DELHI-24
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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.2706/06-SM

(Arising out of order in appeal No.185/CE/Appl/KNP/06 dated 27.4.06 passed by the Commissioner of Central Excise (Appeals), Kanpur)

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.

M/s Vacmet Packagings (India) Pvt Ltd .. Appellants
(Rep. by Shri Hemant Bajaj, Advocate)

Vs

CCE, Kanpur Respondent
(Rep. by Shri B.S. Suhag, DR)

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

Date of Hearing: 8.5.08

Final Order No. 802 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of Metalised Polyester Film classifiable under Chapter 39 of Schedule to the Central Excise Tariff Act. On 23rd September, 2004, the Central Excise officers visited the Appellants factory and verified the stock. The Central Excise officers ascertained shortage of raw material wherein Cenvat credit was availed. The Appellants paid the duty on the spot itself. The Adjudicating Authority confirmed the demand of duty of Rs.99,444/- and appropriated the amount deposited by the appellants and also imposed penalty of Rs.15,000- under Rule 25 of the Central Excise Rules, 2002 which has been upheld by the Commissioner (Appeals).

2. The learned Advocate on behalf of the appellants submits that the entire stock taking was conducted on eye estimation which was disputed by the Appellants in reply to Show Cause Notice. He further submits that in any event, the appellants deposited the duty before issue of show cause notice and there is no material for clandestine removal of ~~material~~ goods and imposition of penalty is unjustified.

3. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that the Appellant has in their statement admitted that the raw materials were cleared without payment of duty and, therefore, penalty is justified.

4. After hearing both the sides and on perusal of the record, I find that the Representative of the Appellants in his statement admitted the shortage and deposited the duty on the spot. I find that the Appellants in their own statement admitted the shortage and stated that inputs were cleared without issuing invoices. The statements were not retracted at any point of time. I also notice that the appellants had not disputed the manner of stock taking before issue of Show Cause Notice. Therefore, the contention of the learned Advocate is without any substance. I find that the Appellants admitted that

the inputs were cleared without issuing notice and therefore, penalty is justified. Accordingly, I do not find any merit in the appeal and the same is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*