(17)

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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/1932 -1934 /2006 –SM[BR] Date 30/05/2008

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

To :
THE COMMISSIONER OF CENTRAL EXCISE BHOPAL
48, ADMINISTRATIVE AREA, ARERA HILLS,
HOSHANGABAD ROAD, BHOPAL
462011

THE COMMISSIONER OF CENTRAL EXCISE BHOPAL Appellant

Vs

SHRI VIJAY KUMAR KORI Respondent

I am directed to transmit herewith a certified copy of **Final order No** . 835 -837 /2008 –SM[BR] dated 4.3.2008 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 K.G. BIRI WORKS, PANT NAGAR, SUGAR (M.P.)
2. SHRI BALRAM KORIP PANT NAGAR SUGAR [M.P]

[3]SHRI JASWINDERSINGH BHATIA
M/S SUNNY ROAD LINES BHAGWANGANJ SAGAR [M.P]

2. Adv. / Consult SHRI P.C.KASIV ADV.
E-3/49, KAMDAR MARKET STOP NO.10, BHOPAL

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.1932-34 /2006-SM
E/CO/130-32/06

(Arising out of order in appeal No29-31/CE/BPL/06 dated 20.1.2006 passed by the Commissioner of Central Excise (Appeals), Bhopal)

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.

CCE Bhopal	Appellant (Rep. by Shri A.K. Rastogi, DR)
Vs	
M/s K.G. Biri Works Shri Balram Kori Shri Jaswinder Singh Bhatia	Respondent (Rep. by Shri P.C. Kasiv, Advocate)

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

Date of Hearing: 4 .3.2008

Final Order No. 835-837 /2008-SM(BR)

Per P.K. Das:

Heard both the sides and perused the record.

2. Revenue filed these appeal against the order of the Commissioner (Appeals) whereby the adjudication order was set aside.

(1)

3. Show cause notice dated 4.3.2005 was issued to (1) M/s K.G. Biri Works (2) Shri Vijay Kumar Kori, Prop. Of M/s K.G. Biris Works (3) Shri Balram Kori, Authorised Signatory of M/s K.G. Biris Works and (4) Shri Jasvinder Singh Bhatia, Prop. of M/s Sunny Road Lines. Duty was demanded from Respondent No.1 on the basis of charge of clandestine removal of biris. The Adjudicating Authority confirmed the demand of duty on Respondent No. 1 and imposed penalty on other Respondents. The Commissioner (Appeals) set aside the adjudication order. Hence Revenue filed these appeals before this Tribunal.

4. The learned DR submits that Shri V.K. Kori was carrying out the business of manufacture and clearance of Biris without payment of duty in the name of M/s K.G. Biris Works even after death of its Proprietor. He submits that it is revealed from the bank account and letters of the bank that Shri V.K. Kori is the Prop. of M/s. K.G. Biris Works.

5. The learned Advocate on behalf of the Respondents reiterates the findings of the Commissioner (appeals). He submits that late Shri Dharam Kumar Kori was the Prop. of M/s K.G. Biris Works who expired on 15.2.2002. The demand of duty on the dead person is not sustainable. He further submits that Shri V.K. Kori is the Prop. of the said firm without any evidences. He further submits that Shri V.K. Kori kept the bank account after the death of Dharam Kumar, has no relation with demand of duty. He also submits that Shri V.K. Kori had not signed the invoices.

6. After hearing both the sides and on perusal of record, I find that the revenue proceeded on the basis of Adhikar Patra which is in the nature of letter of authorization signed by late Shri D.K. Kori. It is revealed from the

Adhikar Patra that Shri V.K. Kori was authorized to use the brand name "Murga Chap". The main contention of the learned DR is that Shri V.K. Kori is the Prop. of the said firm as revealed from the letters of the bank and the transaction of the bank account. The Commissioner (Appeals) has observed that the adjudication order was passed beyond the show cause notice as the demand of duty was proposed on M/s K.G. Biri whose Proprietor expired on 15.2.2002. On perusal of the record, I find that show cause notice was issued to K.G. Biri Works (Respondent No.1) and its Prop. Shri V.K. Kori who is still alive. Therefore, the findings of the Commissioner (Appeals) is erroneous. In any event, I find that both the authorities below had not examined the letters issued by the banks and the transaction stating that Shri V.K. Kori was Prop. of the said firm. Therefore, the impugned orders are set aside and the matter is remanded back to the Adjudicating Authority to examine the letters of banks ~~and letter~~ and also to verify as to whether Shri V.K. Kori is the Prop. of M/s K.G.Biri Works. Needless to say, that the adjudicating authority will give proper opportunity of hearing to the respondents. The appeals are allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*