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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/2722/2006-SM[BR]   Date 09/06/2008

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

To :
CCE GURGAON

UDHYOG MINAR, UDHYOG VIHAR, VANIJ NIKUNJ,
PHASE-V, GURGAON
CCE GURGAON   Appellant

Vs

M/S ROLASTAR PVT. LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No 888 /2008 –SM[BR]**. dated 9.5.2008

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

Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

M/S ROLASTAR PVT. LTD.

BEHRAMPUR ROAD, GURGAON

2. Adv. / Consult SHRI RAM CHANDER CHOUDARY ADV.
1610, SECTOR-4, URBAN ESTAE, GURGAON-122001

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)

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. III

Excise Appeal No. 2722 of 2006 – SM (BR)

[Arising out of the Order-in-Appeal No. 143/NS/GGN/2006 dated 31/05/2006 passed by The Commissioner of Central Excise, Delhi – III, Gurgaon.]

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 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, Delhi – III, Gurgaon — Appellant

Versus

M/s Rolastar Pvt. Ltd. — Respondent

Appearance

Shri B.S. Suhag, Authorized Representative (DR) – for the appellant.

Shri Ram Chandra Choudhary, Advocate – for the Respondent.

CORAM : **Hon'ble Shri P.K. Das, Member (Judicial)**

DATE OF HEARING : 09/05/2008.

Final Order No. 888/08-SM(BR) Dated : 9-5-08

Per. P.K. Das :-

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby confiscation of the seized goods and imposition of redemption fine were set aside and penalty was reduced.

2. The learned DR on behalf of the revenue submits that the Commissioner (Appeals) failed to appreciate that non-maintaining of proper records and non-entering the production in the daily stock register is the first step towards clandestine removal, hence, excess stock was correctly confiscated.

3. The learned advocate on behalf of the respondent reiterates the finding of the Commissioner (Appeals).

4. After hearing both the sides and on perusal of the records, I find that the Central Excise officers visited the

respondent's factory on 28th October 2004 and conducted stock verification. The Central Excise officers ascertained excess stock of finished goods involving Central Excise Duty of Rs. 83,326.00. Adjudicating Authority confiscated the seized goods and imposed redemption fine of Rs. 85,000.00 and also imposed penalty of Rs. 20,000.00. Commissioner (Appeals) set aside the confiscation and reduced the penalty to Rs. 10,000.00. For the purpose of proper appreciation of the facts of the case, the relevant portion of the order of the Commissioner (Appeals) is reproduced below :-

> "The appellant subsequently explained their stock position vide their letter dt. 5-1-05 before issue of show cause notice in the case and took a plea that the excess stock was on account of counting of semi-finished goods and the production of the day of the visit. The appellant have also explained in their appeal and also during the course of personal hearing that their product was not finished till the locking process to join the small lengths of the ducts is done. This process of locking was not done on the alleged excess goods seized by the visiting officers. I also take a notice of the fact that the goods,

'G.I. Hollow Profiles' are manufactured by the appellant against the specific orders of their buyers who are the manufacturers of the air conditioning machinery. Thus the goods manufactured by the appellant are used by the specific buyer and cannot be used by other persons in general."

5. I do not agree with the submission of the learned DR that non-maintaining of proper records is the first steps towards clandestine removal. In my view, there are various reasons for non-maintaining of proper records and excess stocks, which are required to be considered during the proceedings. On perusal of the above finding, I find that the Commissioner (Appeals) properly considered the reasons for non-maintenance of record and thereafter confiscation was set aside. So, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, appeal filed by the revenue is rejected.

(Dictated and pronounced in open court)

(P.K. Das)
Member (Judicial)

PK