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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/133 /2006-SM[BR]

Date 09/06/2008

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

To :
M/S ANKA INDIA LTD.
VILLAGE & PO-KHERKI DAULA ,DISTT.-GURGAON
122001

M/S ANKA INDIA LTD. — Appellant

Vs

CCE,GURGAON — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 900 /2008 –SM[BR] dated 11.4.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   CCE,GURGAON
   VANIJYA NIKUNJ,UDYOG VIHAR,PHASE-V,GURGAON
2. Adv. / Consult SHRI SRINIVAS ADV.
   K-1/114, FIRST FLOOR C. PARK
   NEW DELHI-110019
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH NEW DELHI

Excise Appeal No.133 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.361/GRM/GGN/2005 dated 17th October, 2005 passed by the Commissioner of Central Excise (Appeals), Gurgaon]

Date of Hearing/ Decision:11.4.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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?	:	

Anka India Limited ...Appellants
[Rep. by Shri Srinivas Kotni, Advocate]

Vs.

CCE, Gurgaon ...Respondents
[Rep. by B.S. Sughag, DR]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No. 9-SM/68-SM(BR)/Dated:11.4.2008

Per P.K. Das:

Heard both sides and perused the records.

2. The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of Shoe Soles of Polyurethane and Thermo-plastic Rubber classifiable under sub-heading No.6401.91 of the

Schedule to the Central Excise Tariff Act, 1985. On 29th January, 1998, the Preventive Officers of Central Excise visited the Appellant's factory and conducted stock verification. The Central Excise Officers on scrutiny of the records found some invoices against which no duty was debited in the Cenvat Account. They have also ascertained shortage on raw materials and finished goods. Shri A.R. Chouthey, Vice President of the Appellant-Company in his statement accepted the irregularity and deposited the duty on the same date. The Adjudicating Authority confirmed the demand of duty and imposed penalty of equal amount, which was upheld by the Commissioner (Appeals).

3. Ld. Advocate on behalf of the Appellant submits that Shri A.R. Chouthey, Vice President, on the very next day vide letter dated 30.1.98 retracted the statement and submitted that the duty reversed under duress should be treated as under protest. He further submits that the allegation of clandestine removal is based on seven cancelled invoices, which was intimated to the Range Superintendent much before the visit of the officers. He also submits that no stock taking was conducted. He further submits that both the authorities below totally ignored the submission of the ld. Advocate and no finding was given on the retraction of the statement.

4. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the Vice President of the Appellant-Company admitted irregularity and deposited the duty on the spot and, therefore, there is no scope for further investigation. So, the demand of duty and penalty are justified.

5. After hearing both the sides and on perusal of the records, I find that both the authorities below proceeded on the basis of the statement of the Vice President, where he admitted the irregularity and deposited the duty on the spot, and, therefore, there is no reason for further investigation. I find force in the submissions of the ld. Advocate that the Vice President of the Appellant-Company on the very next day vide letter

dated 30.1.98 retracted his statement. For the purpose of proper appreciation of the case, the relevant portion of the letter dated 30.1.98 is reproduced below:-

> "Yesterday i.e. on 29.1.98 preventive staff of Central Excise Division-II, Gurgaon raided our factory and confined me to a room till late night and forced me to write a dictated statement under threat and coercion. The recorded statement is not true and factual statement and no cognizance of it should be taken. The amount of Rs.1,95,488/- was reversed under duress and should be treated as reversal under protest and not voluntary."

It is apparent in the aforesaid letter that the Vice President of the Appellant-Company alleged that the Preventive Officers confined him in a room till late night and forced him to write a dictated statement under threat and coercion. I find that the Adjudicating Authority had not given any ~~single~~ findings on this issue. The Commissioner (Appeals) had also not given proper finding on this issue. I find that both the authorities below had ignored the submission of the Appellants against the Preventive Officers in respect of the statement. In my view, it is required to be examined by the Adjudicating Authority the correctness of the submission by the Vice President of the Appellant-Company in his letter dated 30.1.98 and to decide the matter after considering the various submissions of the Appellant. Accordingly, the impugned order is set aside and the matter is remanded back to the Adjudicating Authority to decide afresh after considering the submission and to pass order in accordance with law. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 11.4.2008.

(P.K. Das)
Member (Judicial)

Ckp.