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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

Date 03/07/2008

Appeal No. E/3030/2006-SM[BR]

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

To :
C.C.E. LUCKNOW
7-A,ASHOK MARG,LUCKNOW. Appellant
Vs
C.C.E. LUCKNOW Respondent

M/S SHREE GIRIRAJ SUPARI TRADERS

I am directed to transmit herewith a certified copy of **Final order No**. 1033 /2008 –SM[BR] dated 1.5.2008 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 SHREE GIRIRAJ SUPARI TRADERS
   DELHI BYE PASS ROAD, MATHURA.
2. Adv. / Consult SHRI VIVEK AGARWAL ADV.
   M/S RESPONDENT. ;--------------

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.3030/06-SM

(Arising out of order in appeal No.42(A)/CE/LKO/06 dated 28.4.06 passed by the Commissioner of Central Excise (Appeals), Lucknow)

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, Lucknow Appellant
(Rep. by Shri S. Gautam, SDR)

Vs

M/s Shree Giriraj Supari Traders Respondent
(Rep. by Shri Vivek Agarwal, Advocate)

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

Date of Hearing: 1.5.08

Final Order No. 1033 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of 'Scented Sweet Supari'. On 22nd June, 2004, the Central Excise officers visited the respondents factory and conducted the stock verification. The Central Excise officers detected excess quantity of finished goods and raw material and also shortage of inputs on which Central Excise credit has been taken. The Adjudicating Authority confiscated the excess quantity of finished goods, raw material and imposed redemption fine. He also directed to recover the credit on the shortage of inputs namely 'Perfume" and also imposed penalty. The Commissioner (Appeals) modified the adjudication order in so far as redemption fine and penalty were reduced and also set aside the recovery of credit on the shortage of perfume.

2. After hearing both the sides and on perusal of the record, the relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

"(IV) Recovery of credit availed on perfume and penalty:

The appellant has taken plea that in fact input (perfume) was not short, but it was lying in the office portion of factory. This plea of appellant is acceptable because it is apparent from the records that the officers visited the factory on 22.6.2004 verified the stock of raw material and took the statement of Shri O.N. Agarwal, the authorized signatory who signed the panchnama also. In panchnama and in his statement he clearly stated that due to being costly and their trade secret less quantity is issued and rest are being stored by the proprietor in his residence. However, the officers of Central Excise did not take pain or made any efforts to verify from the proprietor. It is also noted that later on Shri Suresh Chand Agarwal, in his statement under Section 14 deposed that the perfume was lying in the factory itself and due to being trade secret no other person was aware about it, as he himself was doing blending also.

The adjudicating authority has not rectified the error made by the preventive officers of not investing the matter and confirmed the duty amount without considering the plea of the appellant Even if the raw material was found short, evidence would still be needed to have been brought for establish the charge of clandestine removal in this case.

Nothing of the sort has been done, and issue confirmed on suspicion without any cogent corroborative evidence having been brought on record.'

3. The Adjudicating Authority observed that the respondents cleared the inputs as such to the residence and therefore, credit is recoverable as per Cenvat Credit Rules.

4. The question in this case is as to whether there was any shortage during stock verification. The respondents in the panchnama stated that due to being costly and their trade secret, less quantity is issued and rest stored by the proprietor in his residence. The Proprietor in his statement stated that the goods were lying in their factory itself and due to being trade secret, no person ever any doubt as he himself was doing.

5. The learned DR contended that the statement was given by the Proprietor after about five months. I find that the employee of the respondent in his statement on the spot, stated that the goods were stored by the Proprietor. The Proprietor of the respodents in response to the summons explained that the goods were stored by him in the factory. Thus, the respondents cannot be attributed in delay. I agree with the finding of the Commissioner (Appeals) that the Investigating Agency had not investigated the matter properly. So, I do not find any reason to interfere with the order of the commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*