TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/3229/2006-SM[BR] Date 03/07/2008

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

To :
C.C.E.KANPUR
117/7,SARVODAYA NAGAR,KANPUR.

C.C.E.KANPUR Appellant
Vs
M/S RUBBER COMPLEX(INDIA) Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1034 /2008 –SM[BR] dated 23.5.2008 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 RUBBER COMPLEX(INDIA)
SHAHGANJ,AGRA (UP)
2. Adv. / Consult SHRI HEMANT BAJAJ ADV.
A -5 ,BASEMENT LAJPAT NAGAR –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.3229/06-SM

(Arising out of order in appeal No.242/CE/Appl/KNP/06 dated 27.6.06 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

CCE, Kanpur — Appellant (Rep. by Shri Rajmal, DR)

Vs

M/s Rubber Complex (India) — Respondent (Rep. by Shri Hemant Bajaj, Advocate)

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

Date of Hearing: 23.5.08

Final Order No. 1034 /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 PVC Soles falling under sub-heading 6401.91 of the Central Excise Tariff Act, 1985. On 4.11.2004, the Central Excise

Officers visited the Respondents factory and conducted stock verification of raw materials and finished goods. The officers ascertained excess quantity of raw materials and finished goods. The Adjudicating Authority confiscated the ~~finished~~ excess quantity of finished goods and raw materials, imposed redemption fine of Rs.62,000/- and Rs.21,000/- respectively. He also imposed penalty of Rs.82,000/- under Rule 25 of the Central Excise Rules, 2002 and Rule 13(1) of Cenvat Credit Rules, 2002 separately. The Commissioner (Appeals) set aside the confiscation and imposition of redemption fine and reduced the penalty to Rs.10,000/- under Rule 13 of Cenvat Credit Rules, 2002. Hence Revenue filed this Appeal against the order of Commissioner (Appeals).

2. The learned DR on behalf of the Revenue submits that the Commissioner (Appeals) is holding that confiscation of un-accounted goods and imposition of penalty for such non-accountal, intention to evade payment of duty is required to be established. He submits that it is undisputed fact that the goods were found in excess and therefore, confiscation and imposition of penalty are justified.

3. The learned Advocate on behalf of the Respondents, reiterates the finding of Commissioner (Appeals). He submits that the Commissioner (Appeals) while passing the order, had also taken into account that the excess finished goods were not in packed condition. He relied upon the decision of the Hon'ble Madhya Pradesh High Court in the case of Supreme Industries Vs CESTAT reported in 2007 (214) ELT 187 (MP).

4. After hearing both the sides and on perusal of record, it is seen from the impugned order that while setting aside the confiscation and penalty on

the finished goods, the Commissioner (Appeals) noted that the Respondents took the plea that the goods were not finished as the same were not in packed condition prior to RG I stage and this plea of the Respondents has not been rebutted by the Adjudicating Authority and the show cause notice is silent about the fact that whether goods were in packed condition at the time of seizure. I find that the Revenue has not disputed the findings of the Commissioner (Appeals) in the Memo of Appeal in this regard. I also note that the Commissioner (Appeals) upheld the imposition of penalty under Rule 13 of Cenvat Credit Rules. So, the contention of the learned DR that the order of the Commissioner (Appeals) in respect of Rule 13 (1) is silent, untenable. The Commissioner (Appeals) set aside the confiscation of goods following the decision of the Tribunal in the case of Bhilai Conductors Vs Commissioner reported in 2000 (125) ELT 781. The Hon'ble Madhya Pradesh High Court in the case of Supreme Industries (supra) relied upon the decision of the Tribunal in the case of Bhilai Conductors (supra) and held that confiscation of goods for non-accountal in RG.I, there is no material to show that there was intention to evade duty. Therefore, confiscation and penalty are not sustainable.

5. In view of the above discussion, and considering the overall facts and circumstances of the case, I do not find any merit in the appeal of the Revenue. Accordingly, the Appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*