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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/2541/2006-SM[BR] Date 03/07/2008

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

To :
M/S RELIANT PACKAGING FILMS LTD.
60 KMS MILE STONE, DELHI JAIPUR HIGHWAY,
VILLAGE BILASPUR, GURGAON, HARYANA
M/S RELIANT PACKAGING FILMS LTD. Appellant
Vs
C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1035 /2008 -SM[BR] dated 8.5.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. DELHI III
   UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ, PHASE V, GURGAON - 122016 (HARYANA)
2. Adv. / Consult
   MR.R.K.PHILIPS
   M/S SIRMACS CONSULTANCY SERVICES, UG-3,PRAGATI TOWER, 26, RAJENDRA PLACE, N.DELHI.
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.2541/06-SM

(Arising out of order in appeal No.125/GRM/GGN/06 dated 19.4.06 passed by the Commissioner of Central Excise (Appeals), 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 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

M/s Reliant Packaging Films Ltd ... Appellants
(Rep.by Shri R.K. Philips, Advocate)

Vs

CCE, Delhi-III Respondent
(Rep. by Shri S.L. Meena, DR)

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

Date of Hearing: 8.5.08

Final Order No. 1035 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of LD/HDPE Films classifiable under sub heading No. 3920.32 of the Central Excise Act, 1985. On 23rd September, 2003, the Central Excise officers visited the appellants factory and verified the stock of raw material. The Central Excise officers ascertained shortage of raw material where Cenvat credit was availed. The Appellants debited the duty vide RG 23 Part II Entry No. 245 dated 4th December, 2003. The Adjudicating Authority confirmed the demand of duty and appropriated the amount as debited by the appellants. He also imposed penalty of equal amount under Section 11AC of the Central Excise Act, 1944. The Commissioner (Appeals) upheld the Adjudication order.

2. The learned Advocate on behalf of the Appellants submits that there was no stock taking. He also submits that the Panchnama was prepared and the witnesses were not present on the spot. Therefore, the appellants requested for cross examination of the panchas before the Adjudicating Authority which was denied. He further submits that the entire stock taking was conducted within 12 hours of the stock of huge material. He further submits that there is no clandestine removal of goods and therefore, penalty under Section 11AC is not warranted. He relied upon the decision of the Tribunal in the case of Malwa Cotton Spinning Mills Vs CCE Chandigarh reported in 2003 (155) ELT 1561 (Tri). He drew the attention of the Bench to the letter dated 30.9.03 where the appellant debited the duty under protest and disputed the shortage of raw material.

3. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that the appellants in their statement on the spot, accepted the

shortage and deposited the duty. He further submits that the appellants paid the penalty of 25% of duty upon receipt of the Adjudication Order. So, it is clearly established that the appellants removed the raw material clandestinely and penalty under Section 11AC of the Act is justified.

4. After hearing both the sides and on perusal of the record, I find that the Central Excise officers conducted the stock verification on 23.9.03 and detected shortage of raw material and also recorded the statement of Shri Sunil Gagan, Authorized signatory of the appellant. It is revealed from the statement of the Authorized Signatory of the appellant that during the course of stock taking, the officers detected the shortage and physically found shortage vis-a-vis recorded balance. It is also noticed from the said statement that the panchnama was drawn on the spot. The Appellants by their letter dated 30.9.03 informed the Superintendent of Central Excise (Preventive) that there was no shortage of raw material but a mistake in accounting of stock.

5. I find from the record that the Authorized Signatory of the appellant in his statement on the spot, accepted the shortage and agreed to pay the duty thereon. On a query from the Bench, the learned Advocate submits that the said statement was not retracted at any point of time. The learned Advocate strongly contended that there was no stock taking in proper manner. But the letter dated 30.9.03 indicates that there was a mistake in physical accounting of stock which is contrary to the submission of the learned Advocate. Therefore, the contention of the learned Advocate that there was no stock taking is not sustainable and the Adjudicating Authority rightly appropriated the duty as deposited by the Appelalnt. But I agree with the learned

Advocate that there is no material for clandestine removal of raw material and therefore, penalty under Section 11AC of the Central Excise Act is not warranted. Accordingly the demand of duty is upheld. Penalty imposed under Section 11AC is set side. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*