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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/1060/2006-SM[BR]

Date 03/07/2008

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

To :
S.S. NANDWANA, MANAGING DIRECTOR
M/S LA-CHEM PHARMACEUTICALS (P) LTD. MIE,
BAHADURGARH, HARYANA
S.S. NANDWANA, MANAGING DIRECTOR

Appellant
Vs
Respondent

C.C.E. ROHTAK

I am directed to transmit herewith a certified copy of **Final order No 1037 /2008 –SM[BR]**. dated 8.4.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. ROHTAK
SCO NO,6 SECTOR 1, ROHTAK.
2. Adv. / Consult
MR.BHASIN SETHI & ASSICIATE
401,SATYAM CINEMA BUILDING,RANJEET NAGAR,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.1060/06-SM

(Arising out of order in appeal No.470-471/GRM/RTK/2005 dated 28.12.05 passed by the Commissioner of Central Excise (Appeals), Rohtak)

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.

Shri S.S Nandwana — Appellant (Rep. by Shri VR. Sethi, Advocate)

Vs

CCE, Rohtak — Respondent (Rep. by Shri Sumit Kumar, DR)

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

Date of Hearing: 8.4.08

Final Order No. 1037 /2008-SM(BR)

Per P.K. Das:

The Appellant is the Managing Director of M/s La Chem Pharmaceuticals Ltd (in short the Company) filed this appeal against imposition of penalty of Rs.1,08,000/- for his involvement of manipulation of TR-6 challan and Rs.25,000/- for involvement in keeping unaccounted excisable goods, under Rule 26 of the Central Excise Rules, 2002. It has been alleged that the Company had forged two TR-6 challans submitted to the Department by manipulating to Rs.1,20,000/- whereas they actually deposited Rs.12,000/-. It has further been alleged that during stock verification shortage of inputs and excess of finished goods were detected. The Company paid the duty of Rs. 22,810/- on the shortage of inputs upon detection. They have paid duty of Rs.1,08,000/- against the said two TR challans. The Company paid the duty on the excess amount of TR-6 challans and the shortage of inputs upon detection. The Central Excise officers also detected excess quantity of finished goods. The Adjudicating Authority confiscated the excess goods and imposed redemption fine and also confirmed the demand of duty of Rs.22,810/- on the shortage of inputs which was duly debited by the ~~Appellants~~ Company and also imposed penalty of equal amount under Section 11AC on the shortage of inputs upon the Company. He also imposed penalties upon the Appellant as stated above which has been upheld by the Commissioner (Appeals).

2. The learned Advocate on behalf of the Appellants submits that the alleged forging of TR-6 challans were committed by the Accountant of the Company and the Appellant had no knowledge. He also submits that the Company filed FIR against the Accountant for such forgery. He further submits that the Appellant deposited the duty amount on forged TR-6 challans even it was beyond the extended period of five years limit. He further submits that Shri C.S. Nandwani, Director was not looking after the

day to day working of the Company and therefore, imposition of penalty of Rs.25,000/- upon the Appellant is unjustified.

3. The learned DR on behalf of the Department reiterates the findings of the Commissioner (Appeals). He submits that forging of TR-6 challans is established and the Appellant is the Managing Director of the Company and, therefore, he is responsible for such serious offence. He relied upon the decision of the Hon'ble Supreme Court in the case of Cosmic Dye Chemical Vs CCE Bombay reported in 1995 (75) ELT 721 (SC). He further submits that even Shri C.S. Nandwani was looking after day to day work of the Company and he is overall responsible under the Companies Act.

4. After hearing both the sides and on perusal of the record, it is seen that the shortage was detected during stock verification and the appellant admitted the shortage and debited the duty on the same day. There is no material of involvement of the appellant in connection with shortage/excess of goods and therefore, the imposition of penalty of Rs.25,000/- upon the appellant is not justified.

5. Regarding imposition of penalty of Rs.1,08,000/-, the learned Advocate submits that there is no material that the appellant had knowledge of the forging of TR-6 challan. He emphasized that the offence was committed by the Accountant against whom the police case is pending. It is noted that the forging of TR-6 challans was committed in July, 1998 and it was detected in October, 2003 which is beyond the extended period of limitation and the ~~Appellant~~ Company deposited the duty with interest. No dispute was raised.

6. The learned Advocate submits that in this case, Rule 26 of the Rules cannot be invoked. I find that it is an admitted fact of forgery of TR-6 challan, which is a serious offence and the appellant cannot be escaped from his responsibility as it is a matter of accounts. The Rule 26 of the Rules is applicable herein. The imposition of penalty on the Appellant is justified.

7. In view of the above discussion, penalty of Rs.25,000/- imposed on the Appellant for shortage/excess of goods, is set aside. Regarding penalty of Rs. 1,08,000/-, I find force in the submission of the learned Advocate that the Company settled the penal provisions by paying 25% of duty in terms of 1st Proviso to Section 11AC of the Central Excise Act. So, the imposition of penalty of equal amount on the Appellant is not proper. Therefore, amount of penalty is reduced to Rs.50,000/-. The Appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*