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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/2660/2006-SM[BR] Date 08/07/2008

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S GOETZE IND,LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1051 /2008 –SM[BR] dated 2.6.2008 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 GOETZE IND,LTD
   BAHADURGARH, DISTT. PATIALA (PUNJAB)
2. Adv. / Consult SHRI RAVI RAGHAVAN ADV.
   B-6/10, SAFDARJUNG ENCLAVE NEW DELHI-29

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.2660 of 2006 –SM (BR)

[Arising out of Order-in-Appeal No.408/CE/CHD/2006 dated 09.05.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:2.6.2008

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? :

No

CCE, Chandigarh ...Appellants
[Rep. by Shri S. Gautam, DR]

Vs.

M/s. Goetze India Ltd. ....Respondent
[Rep. by Shri Ravi Raghavan, Advocate]

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

FINAL Order No../1051/08-SM/Dated:02.06.2008

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby Adjudication order was set aside.

2. The relevant facts of the case, in brief as per records, are that the Respondents are engaged in the manufacture of Pistoms & Gudgeon Pins classifiable under Chapter 84 of the schedule to the Central Excise Tariff Act, 1985. During the audit of the records, the Central Excise Officers detected that the Respondents cleared excisable goods to their depot under the cover of document, which was not a valid document in terms of Rule 11 of the Central Excise Rules, 2002. The Respondent contended that they were clearing the goods to their depots. The goods were rejected by the depot due to some defects and were returned back to their factory for being re-made or reconditioned under Rule 16 of the Rules. The Adjudicating Authority confirmed the demand of duty of Rs.3,03,182/- along with interest and imposed penalty of equal amount. The Commissioner (Appeals) set aside the Adjudication Order. Hence, Revenue filed this appeal.

3. Ld. DR on behalf of the Revenue reiterates the grounds of appeal. He submits that the Respondent had not produced any evidence that the duty paid goods were received by them nor they could produce any duty paying documents evidencing clearance of the rejected goods. He submits that the Commissioner (Appeals) erroneously followed the decision in the case of Pepsi Food Ltd. Vs. CCE, New Delhi – 2003 (154) ELT 387 (Delhi).

4. After hearing both the sides and on perusal of the records, it is seen that the Adjudicating Authority confirmed the demand of duty on the

ground that the Respondent failed to obtain the requisite permission from the competent authority for receiving and clearing such goods without payment of duty. For the purpose of proper appreciation of the case, the relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

> "The contention of the appellant is that they have received the defective/rejected goods from their depots only to whom the said goods were cleared on payment of duty. The goods have been returned on the invoices raised from the appellant depots which may not be cenvatable invoices. This fact has not been denied by the Department and as such it is a clear cut evidence to prove that the goods were duly accounting for in the books of accounts and proper records are maintained both at the depots and our factory, which clearly shows that the goods are of the appellant and already duty paid. While returning the goods after reprocessing proper invoices are raised from the factory. The contention of the appellant seems to be quite correct and convincing in as much as the fact that the appellant have cleared the goods initially on payment of duty to the depots is not disputed. The invoices raised by the depots of the appellant for sending the rejected goods is also not disputed and the return of the said goods to the depots by issue of invoices is also on record. The perusal of such invoices produced by the appellant proves the bona fide of the appellant. Moreover, the goods have been received only from the depots and not from any other agency. In case there was any doubt about the fact the Department could have got it verified from the jurisdictional Central Excise Authorities where such depots are located."

5. The Revenue contended in the Grounds of Appeal that the party was required to follow proper procedure for availing Cenvat Credit in terms of Rule 16 of the Central Excise Rules, 2002, in case the duty paid goods were received back by them for carrying out further processes. In the instant case, it is seen that the Respondents had not availed the Cenvat Credit on the defective finished goods received by them. They also not paid the duty on the clearance of the defective goods. The Tribunal in the case of Pepsi Foods Pvt. Ltd. (supra) held that no duty is payable in respect of defective goods, which are received by a manufacturer and returned after re-processing.

6. Ld. Advocate submits that the decision of the Tribunal in the case of Pepsi Foods (P) Ltd. (supra) was upheld by the Hon'ble Supreme Court as reported in 2004 (169) ELT 836 (SC). I find that the Commissioner (Appeals) allowed the appeal after examining the documents, as mentioned above. Revenue has not disputed the examination of the records by the Commissioner (Appeals) in their appeal. Therefore, I do not find any merit in the appeal of the Revenue. Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 02.06.2008.

(P.K. Das)
Member (Judicial)

Ckp.