(18)

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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/1307 -1308 /2006-SM[BR] &E/2744 , 2732/2006 WITHCO/230-231/2006 Date 22/07/2008

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

M/S RAMDAS ENTERPRISE
KOTHI ROAD, SATNA, M.P.

[2]M/S KISHMAT KABIR TOBACCO BHANDAR
KOTHI ROAD, BAGAHA, DISTT; SATNA [M.P]
[3]SHRI RAMDAS, PROPRIETOR M/S KISMAT KABIR TOBACCO BHANDAR, SATNA [M.P]

M/S RAMDAS ENTERPRISE [4] M/S RAMDAS ENTERPRISES, SATNA [M.P.] Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE BHOPAL
M.P. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1057 -1060 /2008-SM[BR] dated 19.2.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

   THE COMMISSIONER OF CENTRAL EXCISE BHOPAL M.P.

   48, INSTITUTIONAL AREA, ARERA HILLS HOSHANGABAD ROAD, BHOPAL (M.P.)

2. Adv. / Consult

   MR.U.S.BHATT

   107,SANGAM COLONY,BALDEO BAG,JABALPUR.

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, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeals Nos.E/1307-1308 of 2006-SM (BR)
& Appeals No.E/2744, 2732/06-Excise with
Cross Objection Nos. 230-231/06-Ex

[Arising out of order in appeal No.163-164-CE/BPL/2005 and 162-CE/BPL/2005, both dated 30.11.2005 passed by the Commissioner (Appeals), Central Excise (Appeals), Bhopal]

Date of Hearing/ Decision: 19.2.2008

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?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	

Excise Appeals Nos.E/1307-1308 of 2006-SM (BR)

M/s. Ramdas Enterprises
M/s. Kismat Kabir Tobacco Bhandar

Appellants
[Rep. by Mr. U.S. Bhatt, Advocate]

Vs.

CCE, Bhopal

Respondent
[Rep. by Mr. A.K. Rastogi, Authorized Representative (DR)]

Appeals No.E/2744, 2732/06-Excise with Cross Objection Nos.230-231/06-Ex

CCE, Bhopal ...Appellants

Vs.

M/s. Ramdas Enterprises ...Respondent

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

Final **ORDER NO.1057-1060/08-SM (BR)/Dated:19.2.2008**

Per P.K. Das:

Common issue is involved in these appeals and, therefore, all the appeals are being taken up together for disposal. Today, the assessees' appeals were listed for hearing. Ld. Advocate submits that Revenue filed appeals against the impugned orders. Upon direction of the Bench, Revenue's appeals have also been taken up for hearing.

2. The relevant facts of the case, in brief, are that Shri Ramdas Proprietor of M/s. Kismat Kabir Tobacco Bhandar (in short "M/s. Kismat") are engaged in the manufacture of chewing tobacco. Shri Ramdas has other proprietorship firm, M/s. Ramdas Enterprises (in short M/s. Ramdas) in the same premises engages in trading in tobacco.

3. Show cause notice dated 2.1.98 was issued to M/s. Ramdas, M/s. Kismat and Shri Ramdas. The adjudicating authority by adjudication order

dated 31.3.2005 decided the show cause notice dated 2.1.98. M/s. Ramdas and M/s. Kismat filed appeal before the Commissioner (Appeals), which was decided by Order-in-Appeal No.163-164/CE/BPL/2005 dated 30.11.2005. Revenue also filed appeal against the adjudication order dated 31.3.2005 before the Commissioner (Appeals) for imposition of penalty under Rule 173Q of the erstwhile Central Excise Rules, 1944. By Order-in-Appeal No.147-CE/BPL/06 dated 18.5.2006, the Commissioner (Appeals) rejected the Revenue's appeal.

4. Another show cause notice dated 24.6.99 was issued to Shri Ramdas, Proprietor of M/s. Kismat and M/s. Ramdas, which was disposed of by adjudication order No.26/JC.CEX/2005 dated 28.3.2005. M/s. Kismat filed an appeal against order-in-original dated 28.3.2005 before the Commissioner (Appeals). By Order-in-Appeal NO.162-CE/BPL/2005 dated 30.11.2005, the Commissioner (Appeals) upheld the demand of duty of Rs.9,68,499.00 and set aside statutory penalty and penalty under Rule 209A of erstwhile Central Excise Rules, 1944. Revenue also filed appeal against the said order-in-original for imposition of penalty under Rule 173Q, which was rejected by the Commissioner (Appeals), which was rejected by Order (Appeals) No.146-CE/BPL/06 dated 18.5.2006.

5. Hence, M/s. Ramdas filed Appeal No.E/1307/2006 against order-in-appeal No.163-164-CE/BPL/2005 dated 30.11.2005. M/s. Kismat filed

appeal No.E/1308-CE/BPL/2006 against the Order-in-Appeal No.162-CE/BPL/2005 dated 30.11.2005. Revenue filed appeals Nos.E/2744 and 2732/EX of 2006 against Order-in-appeal No.147-CE/BPL/2006 dated 18.5.2006 and Order-in-Appeal No.146-CE/BPL/2006 dated 18.5.2006, whereby Revenues appeals were rejected.

6. It is seen from the impugned orders that both the show cause notices were issued in respect of charge of clandestine removal of the goods. It is seen from the records that the assessees did not file reply to the show cause notices on the ground that the documents were not supplied to them. It is seen from impugned order that the assessees placed trading records/assessment orders, Sales Tax records etc. before the Commissioner (Appeals) to establish trading of goods in all cases had taken place. The Commissioner (Appeals) had not accepted the evidence placed by the assessees as the same were not produced before the adjudicating authority.

7. After hearing both the sides and on perusal of the records, I find that the appellants could not file the reply to the show cause notice as the documents were not available with them. In any event, the assessee produced the records before the Commissioner (Appeals), which were not verified by the lower appellate authority. I find that the evidences produced by the assessee are required to be verified by the lower authorities. The appeal of the Revenue are in connection with the imposition of penalty

under Rule 173 Q of the Central Excise Rules, which is related to determination of duty. Therefore, all the impugned orders are set aside and the matters are remanded back to the adjudicating authority to examine the evidences produced by the assessees and to pass a fresh order after hearing the assesses. In view of the above, all the appeals are allowed by way of remand.

Order dictated & pronounced in open court on 19.2.2008.

(P.K. Das)
Member (Judicial)

Ckp.