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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/1521 -1522 /2005 –SM[BR] Date 22/07/2008

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

To :
C.C.E INDORE (M.P.)

P.B.NO.10, MANIK BAGH PALACE, INDORE (M.P.)

C.C.E INDORE (M.P.) Appellant

Vs

M/S H&R JOHNSON (INDIA) LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1061 -1062 /2008 –SM[BR] dated 11.4.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

1-2) M/S H&R JOHNSON (INDIA) LTD
INDUSTRIAL AREA NO. 2, A.B.ROAD, DEWAS
2. Adv. / Consult
MR. HEMANT BAJAJ ADV.
F-21, GEETANJALI ENCLAVE,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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeal No.1521-22 of 2005-SM (BR)

[Arising out of Order-in-Appeal No.2-CE/IND-11/2005 and 3-CE/IND-ii/2005 dated 13.1.2005 passed by the Commissioner of Central Excise (Appeals-II), Indore]

Date of Hearing/ Decision:11.4.2008

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?	:	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?	:	

CCE, Indore ...Appellants
[Rep. by Shri S.L. Meena, DR]

Vs.

M/s. H & R Johnson (India) Ltd. ...Respondent
[Rep. by Shri Hemant Bajaj, Advocate]

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

Final Order No.1061-1062/08-SM(BR)/Dated:11.4.2008

Per P.K. Das:

Common issue is involved in these appeals and, therefore, both the appeals are being taken up together for disposal.

2. Revenue filed these appeals against the orders of the Commissioner (Appeals), whereby Adjudication Orders were modified. The relevant

facts of the case on record, in brief, are that the Respondents were engaged in the manufacture of Glazed Wall Tiles and Floor Tiles classifiable under sub-heading No.6906.10 of the Schedule to the Central Excise Tariff Act, 1985. The Central Excise Officers visited the Respondent's Factory and conducted stock verification on 19.11.97 and 20.11.97 and ascertained excess and shortage of finished goods of various sizes against R.G.I. records. The Respondents debited the duty of Rs.4,46,316.00 vide PLA debit entry No.3917 dated 20.11.97 against shortage of finished goods and raw materials. The Respondent filed refund claim of Rs.4,46,316.00 on 4.5.98 as paid by them by mistake of facts. The Adjudicating Authority by Order dated 19.5.98 confiscated the excess quantity and imposed redemption fine and demanded duty on the shortage and adjusted the amount as deposited by them. He also imposed mandatory penalty and interest. The Commissioner (Appeals) by Order (A) No.2-CE/IND-II/2005 allowed adjustment of shortage and excess quantity of finished goods and accordingly modified the demand of duty and set aside the confiscation of goods.

3. In view of the Adjudication Order dated 19.5.98, the Adjudicating Authority by Adjudication Order dated 31.7.98 rejected the refund claim of Rs.4,46,316.00. Commissioner (Appeals) by Order (Appeals) No.3-CE/IND-II/2005 modified Adjudication Order dated 19.5.98 in view of his earlier Order (Appeals) NO.2/CE/IND-II/2005. Hence, Revenue filed their appeals against both orders passed by Commissioner (Appeals).

4. Ld. DR on behalf of the Revenue reiterates the Grounds of Appeal. He submits that the Adjudicating Authority already adjusted against the excess and shortage quantity of the finished goods and thereafter confirmed the demand of duty. He further submits that the Commissioner (Appeals) passed the order without considering the adjustment done by the Adjudicating Authority. He also drew the attention of the Bench of inconsistency of figures as mentioned in the Table of the order of Commissioner (Appeals).

5. Ld. Advocate on behalf of the Respondents reiterates the findings of the Commissioner (Appeals). He submits that the Commissioner (Appeals) allowed the adjustment of shortage and excess of the same category of the goods. He further submits that while preparing the calculation chart of various stocks of Wall Tiles and Floor Tiles, Commissioner (Appeals) had taken into consideration the figures of the Adjudication Order. He relied upon the decisions of the Tribunal as under:-

(a) Maruti Udyog Ltd. Vs. CCE, New Delhi
2002 (150) ELT 969 (Tribunal-Delhi)

(b) Greaves Cotton Limited Vs. CCE, Aurangabad
2007 (208) ELT 393 (Tri.-Mumbai)

(c) M/s. Maruti Udyog Ltd. Vs. CCE, Delhi-III
2004 (174) ELT 382 (Tri.-Delhi)

6. After hearing both the sides and on perusal of the records, it is seen that the shortage of 15067 boxes of Wall Tiles was found against RG-I record. It is revealed from the Adjudication Order that the Respondent

accepted the shortage as recorded in the Panchnama. The Adjudicating Authority extended the benefit of 8173 cartons as Broken Wall Tiles following the order of the Commissioner in the Order-in-Original No.11/97. It is seen from the Adjudication Order that the Respondent paid the appropriate duty on 3106 cartons. Commissioner (Appeals) observed that the benefit of 8253 quantity of cartons was given by the Commissioner in other proceeding. Further, the Adjudicating Authority observed that the Respondent paid the duty on 3106 cartons and it was recorded by the Commissioner (Appeals) as 3026 cartons. It appears that the Commissioner (Appeals) while adjusting the shortage and excess of stocks of Walls Tiles and Floor Tiles had failed to appreciate the findings of the Adjudicating Authority. It is also noticed in the Adjudication Order that the Respondent accepted the shortage of Floor Tiles to the extent of 4567 boxes and paid the appropriate duty on such goods after detection. Ld. Advocate submits that the Respondent filed refund claim against the such deposit, which has been rejected by the Adjudicating Authority and the Commissioner (Appeals) modified the refund claim. Revenue filed the appeal against the admissibility of the refund claim by the Commissioner (Appeals). I find that the Commissioner (Appeals) while passing the impugned orders had failed to appreciate the facts of the case in proper manner.

7. Therefore, the impugned orders are set aside and the matters are remanded back to the Commissioner (Appeals) to re-consider the facts

and figures of the shortage and excesses as shown in the Adjudication Order and thereafter he will adjust the excess and shortage of the Wall Tiles and Floor Tiles in accordance with law. Both the appeals are allowed by way of remand. Needless to say that the Commissioner (Appeals) shall provide opportunity of hearing before decision.

Order dictated & pronounced in the open court on 11.4.2008.

(P.K. Das)
Member (Judicial)

Ckp.