

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/1392/2006-SM[BR]

Date 28/07/2008

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

To :
M/S H.P.COTTON TEXTILE MILLS LTD
15TH K.M.STONE, VILL. MAYAR, DELHI ROAD,
HISAR (HARYANA)
M/S H.P.COTTON TEXTILE MILLS LTD

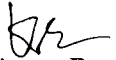
Appellant

Vs

Respondent

THE COMMISSIONER OF CENTRAL EXCISE ROHTAK

I am directed to transmit herewith a certified copy of **Final order No. 1093 /2008 -SM[BR]** dated 16.6.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF CENTRAL EXCISE ROHTAK

17P, SECTOR-I, ROHTAK (HARYANA)

2. Adv. / Consult

MR.R.PAL SINGH

84, DARYAGANJ, 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 Publications (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.1392 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.09/Commissioner/RP/2006 dated 31.01.2006 passed by the Commissioner of Central Excise, Rohtak (Haryana)]

Date of Hearing/ Decision:16.06.2008

For approval and signature:

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

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|--|---|--|
| 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? | : | |
-

M/s. H.P. Cotton Textile Mills Ltd.

...Appellants

[Rep. by Shri R. Pal Singh, Advocate]

Vs.

CCE, Rohtak

....Respondent

[Rep. by Shri B.S. Suhag, DR]

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

Final Order No. 1093/08-SM(BR) /Dated: 16.6.2008

Per P.K. Das:

The Appellant filed this appeal against rejection of application for remission of duty and demand of duty arising thereof.

2 After hearing both the sides and on perusal of the records, I find that the Commissioner rejected the remission application on the ground that one contractor, Shri Bhagwan Sahai on 28.2.2001 set fire in the finished goods, which is a deliberate act by the employee of the Appellant.

3. Ld. Counsel on behalf of the Appellant drew the attention of the Bench to the Order dated 16.4.2004 passed by the Addl. Sessions Judge, Hisar, whereby Shri Bhagwan Sahai was acquitted.

4. Ld. DR on behalf of the Revenue submits that the employees of the Appellant in their statement admitted that Shri Bhagwan Sahai had set the fire by throwing match stick on the finished goods. He further submits that the order of the Id. Addl. Sessions Judge in a criminal case has no effect in the adjudication proceedings. He also drew the attention of the Bench to the said order where Shri Bhagwan Sahai was acquitted of the offence for setting fire on the goods as the prosecution has failed miserably to prove its case against the accused beyond shadow of reasonable doubt. He also relied upon the decision of the Hon'ble Allahabad High Court in the case of Mangal Sen Lal Man Vs. Union of India – 2000 (125) ELT 61 (Allahabad).

5. I find from the order of the Commissioner that the godown was set on fire deliberately by one of the employees of the Appellants by throwing match stick on the finished goods. The Hon'ble Allahabad High

Court in the case of Mangal Sen Lal Man (supra) held that benefit of remission of duty cannot be extended on the deliberate act of fire, which can not be treated as un-avoidable circumstance. I agree with the submission of the ld. DR that the order of the prosecution is not applicable in the adjudication proceedings. But, the prosecution order has ^{permanire} ~~permanire~~ a ~~permanire~~ ^{permanire} value while deciding the adjudication proceedings. In view of that, I set aside the impugned order and the matter is remanded back to the Adjudicating Authority to decide afresh after considering the order of the ld. Additional Session Judge, Hissar. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 16.06.2008.

(P.K. Das)
Member (Judicial)

Ckp.