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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/2201/2007-SM[BR] Date 28/07/2008

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

To :
KRISHNA CAP BOX PRIVATE LTD.
A-10, PARTAPUR INDL. ESTATE PARTAPUR,
MEERUT

KRISHNA CAP BOX PRIVATE LTD. Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1098 /2008 –SM[BR] dated 17.6.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW 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.2261/07-SM

(Arising out of order in appeal No.95/CE/MRT.I/07 dated 10.5.07 passed by the Commissioner of Central Excise (Appeals), Meerut)

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?

N

M/s Krishna Cap Box Pvt Ltd — Appellant
(Rep. by Shri Bipin Garg, Advocate)

Vs

CCE, Meerut-I — Respondent
(Rep. by Shri A.K. Rastogi, DR)

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

Date of Hearing: 17.6.08

Final Order No. 1098 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of P.P. Caps classifiable under heading 8309 of the Schedule to the Central Excise Tariff Act, 1985. In the month of

December, 2005, they received duty paid defective material in their factory. After intimation to the Superintendent of Central Excise by letter dated 12th December, 2005, they availed the credit under Rule 16 of the Central Excise Rules, 2002. They utilized the amount of Rs.20,429/- of cenvat credit on defective material for payment of duty by 5th of the following month in terms of Rule 8 of Central Excise Rules, 2002. In pursuance of the direction of the Assistant Commissioner, the appellants debited the said amount of Rs. 20,430/- and Education cess of Rs. 409/- in

current account

their ~~RG 23A, Part-II~~ vide entry No.18 dated 28.2.06 and deposited the interest of Rs. 452/- by TR-6 challan dated 4.3.06. By letter dated 6.3.06, they informed the Superintendent of Central Excise of the above facts. On 14.3.06, the appellants received the notice dated 8.2.06 to appear for hearing on 23.3.06 in respect of defaulter in payment of duty for the month of December, 2005. The appellants submitted a letter dated 23.3.06 and appeared for personal hearing. By order dated 4.4.06, the Assistant Commissioner of Central Excise directed the appellant to pay Central Excise duty for each consignment by debiting to the current account only for the period of two months. The Commissioner (Appeals) upheld the adjudication order.

2. The learned Advocate submits that appellants paid the duty in terms of sub-rule (1) of Rule 8 of Central Excise Rules within 5th day of the following month. Subsequently, the Central Excise officers informed that the amount of Rs. 20,430/- was utilized from cenvat account is not proper and they have debited the said amount vide entry No. 18 dated 28.2.06. He submits that they have paid the duty within the stipulated period. There is

no violation of Rule 8 of Central excise Rules, 2002. He further submits that the Adjudicating Authority had not considered their contention dated 23.3.06.

3. The learned DR on behalf of the Revenue submits that the appellants by their letter dated 6.3.06 admitted the default for payment of duty and therefore, the Adjudicating Authority had rightly invoked forfeiture facility under Rule 8(3-A) of the said Rules.

4. After hearing both the sides and on perusal of the record, the appellants paid duty for the month of December, 2005 by 5th of the following month. The learned Advocate submits that they have paid duty for the month of December, 2005 of Rs. 6,37,990.60 whereby the amount of Rs. 20,839/- was utilized against the returned goods from Cenvat account. The learned Advocate submits that the appellant rightly utilized the amount of Rs.20,839/- from Cenvat account. But, they debited the said amount immediately at the instance of Central Excise officers in order to avoid legal complexity. After considering the facts and circumstances of the case, I find that the appellants paid the entire amount of duty of Rs.6,37,990.60 during the stipulated period as prescribed under Rule 8(1) of Rules and subsequently the amount of Rs. 20,430/- was alleged irregular which was paid by the appellants voluntarily. In this context, forfeiture facility on monthly payment of duty under Rule 8(3-A) of the Rules cannot be invoked. It may be mentioned that I have not gone into the question as to whether credit of Rs.20,839/- is irregular.

5. In view of the above discussion, the impugned order is not sustainable and accordingly it is set aside. The appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*