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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/1672/2006-SM[BR] Date 31/07/2008

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

To :
M/S K.P.PAN FLAVOURS P LTD.
133/211,T.P.NAGAR KANPUR

M/S K.P.PAN FLAVOURS P LTD. Appellant
Vs
CCE,KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1112 /2008 –SM[BR] dated 29.5.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   CCE,KANPUR
   117/7,SARVODYA NAGAR KANPUR
2. Adv. / Consult
   MR.J.S.SINHA
   4-E, 4TH FLOOR, WORLD TRADE TOWER BARAKHAMBA LANE, NEW DELHI-1
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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL NO. 1672 OF 2006-SM

[Arising out of Order-in-Appeal No. 107-108/CE/Appeals/Kanpur/2006 dated 28.02.2006 passed by the Commissioner (Appeals), Central Excise & Customs, Kanpur]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

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 would 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. K.P. Pan Flavours Pvt. Ltd. Appellants

Vs.

CCE & C, Kanpur Respondent

Appearance:

Shri J.S. Sinha, Advocate for the appellants,
Smt. Archana Pandey Tiwari, Jt. CDR, Departmental Representative, for the Revenue

Coram:

Hon'ble Mr. S.S. Kang, Vice President

Date of Hearing: 29th May, 2008

FINAL ORDER NO. 1112/2008-SM(BR) **dated** 29.5.2008.

Per S.S. Kang:

Heard both sides.

2. Appellants filed this appeal against the impugned order whereby demand of Rs. 94,320/- was confirmed and penalty of equal amount under Section 11AC was imposed.

3. Brief facts of the case are that on 28.11.2002, 30 bags of branded Pan Masala manufactured by the appellants were seized from their customer M/s. Sushil Zarda Merchants. Statement of Shri Santosh Kumar Gupta was recorded by the Excise Official. In his statement he admitted that they have received 30 bags in question from the appellants under the cover of invoice and also produced the relevant invoice. In his statement he also stated that on 27.11-2002 they also received 40 bags under two G/R Nos. 4713 & 4714 at 4.30 PM regarding which he cannot produced any invoice. Investigation was conducted from the appellants, and during investigation it is submitted by the appellants that from 23.11.2002 to 27.11.2002 total 100 bags of branded Pan masala were cleared to Sushil Zarda Merchants under the cover of invoices and also produced copies of relevant invoices. A show cause notice was issued to the appellants demanding duty in respect of 40 bags which were received by their customer on 27.11.2002 at 4.30 PM under cover of transport documents on the ground that the same were

not cleared on payment of duty. Adjudicating authority confirmed the demand and imposed penalty. The Commissioner (Appeals) dismissed the appeal filed by the appellants.

4. The contention of the appellants is that they cleared 100 bags to Sushil Zarda Merchants under the cover of invoices. 40 bags are also cleared on payment of duty under cover of invoices. Therefore, demand is not sustainable. The appellants also submitted that in his statement Shri Santosh Kumar submitted that he placed order with one Shri Mohan Jain for supply of 40 bags. The appellants denied that there is any Mohan Jain is working in their firm. Contention is that as the appellants cleared the goods in question under invoices showing payment of duty, therefore, demand is not sustainable.

5. The contention of the revenue is that 40 bags were received by the appellants on 27.11.2002 at 4.30 PM whereas invoice No. 1984 dated 27.11.2002 showing the clearance of 20 bags at 11 PM. Therefore, goods received by the customer of the appellants at 4.30 PM on 27.11.2002 are not the same which were covered under invoice No. 1984. Contention of the Revenue is that the goods in question are fast selling item and as Shri Santosh Kumar submitted in his statement dated 28.11.2002 that 40 bags were further sold to their customers for retail sale and the same were sold through various retailers. Contention of the Revenue is that as there is no evidence showing payment of duty in respect of 40 bags, therefore, demand is rightly made.

6. I find that in this case dispute is in respect of 40 bags. Case of the appellants is that the same were cleared on payment of duty. I find that 40 bags were received by the customers of the appellants on 27.11.2002 at 4.30 PM under two transport documents. The appellants produced one invoice showing clearance of 20 bags on 27.11.2002 in which time of removal of goods were shown as 11PM. Therefore, this invoice is not in respect of goods in question. In these circumstances as the appellants failed to prove that 40 bags received by their customers on 27.11.2002 were cleared on payment of duty, I find no infirmity in the impugned order. Appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 29th May, 2008-05-29
RK