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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/2345/2006-2348/2006-SM[BR] Date 29/08/2008

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

To :
(1-4) M/S KISAN SAHKARI CHINNI MILLS LTD.
NANAUTA, SAHARANPUR, UP

M/S KISAN SAHKARI CHINNI MILLS LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order** No.1207 -1210 /2008-SM[BR] dated 17.7.2008

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.VIKRANT KACKRIA

   509, SEC-7,PANCHKULA, HARYANA
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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal Nos.2345-2348/06-SM

(Arising out of order in appeal No. 65-68/CE/MRT.I/06 dated 27.4.2006 passed by the Commissioner of Central Excise (Appeals), Meerut-I)

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?

No

M/s Kisan Sahkari Chinni Mills Ltd Appellant
(Rep. by Shri V. Kackaria, 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: 17.7.08

Final Order No. 1207-1210 /2008-SM(BR)

Per P.K. Das:

All the appeals are arising out a common order and therefore, these are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of sugar. The appellants obtained permission from the Commissioner for storing the non-duty paid goods outside the godown for shortage of space. The appellants were permitted to store the goods subject to payment of supervision charges on cost recovery basis for the storage of non-duty paid goods outside the godown. They filed refund claim for excess payment of supervision charges. The Adjudicating Authority rejected the refund claim which has been upheld by the Commissioner (Appeals).

3. The learned Advocate on behalf of the appellants submits that the supervision charges should be ~~were~~ calculated on the basis of actual attendance by the Central Excise officers at the time of clearance of goods and not for the entire period of goods outside the godown. He further submits that the Commissioner (Appeals) rejected the claim erroneously on the basis that the appellants would deposit supervision charges on cost recovery basis for the entire storage period. He relied upon the following decisions of the Tribunal:-

a) CCE, Aurngabad Vs Bajaj Auto Ltd
2007 (217) ELT 210 (Tri. Mum)

b) Rajasthan Textile Mills Vs CCE Jaipur-I
2007 (216) ELT 380 (Tri. Del)

c) Nath Bros Exim International Ltd Vs CCE Noida
2005 (190) ELT 415 ((Tri.-Del)

4. The learned DR on behalf of the Revenue submits that the appeal is not maintainable against the supervision charges. He relied upon the decision of the Hon'ble Rajasthan High Court in the case of Shree Pipes Ltd

Vs Union of India reported in 1995 (79) ETL 405 (Raj) which has been followed by the Tribunal in the following decisions:-

a) D.P. Exports Vs CCE Noida
2005 (188) ELT 503 (Tri.-Del)

b) CCE, Chandigarh Vs Long Life Tools (P) Ltd
2006 (199) ELT 849 (Tri.-Del)

5. After hearing both the sides and on perusal of the record, it is seen that the appellants applied for storing of the goods outside the godown under the provisions of Rule 4(4) of Central Excise Rules, 2002. Rule 4 of the said Rules provides that duty payable on removal of goods, where they are produced or manufactured or from a warehouse unless otherwise provided. Sub-rule (4) of Rule 4 of the said Rules provides that the Commissioner may, in exceptional circumstances, having regard to the nature of the goods and shortage of storage space at the premises of the manufacturer where the goods are made, permit a manufacturer to store the goods in any other place outside such premises without payment of duty subject to such condition as he may specify. In the present case, the Commissioner by Trade Notice No. 21/CE/NT/02 dated 29.10.2002 specified the condition for storing of the goods outside the godown. In this case, the Commissioner allowed storing of goods outside the godown on the condition of payment of supervision charges on cost recovery basis. Admittedly, it is not a duty. So, the refund claim under Section 11B of the central Excise Act, 1944 is not maintainable. The Hon'ble Rajasthan High Court in the case of Shree Pipes Ltd (supra) held that the order of the supervision charges has been passed by the Assistant Commissioner rejecting the claim of refund is an order, which has been passed in the executive powers. It has been held that such executive

order is not appealable under the provisions of Central Excise Act, 1944. So, I agree with the submission of the learned DR that the appeal is not maintainable. Accordingly, the impugned order is set aside. As the order is in executive nature, the appellants may approach the Commissioner or the Administrative authority for redressal of their grievance in accordance with law. All the appeals are dismissed as not maintainable.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*