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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/3238/2006-SM[BR] Date 29/08/2008

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

To :
C.C.E.CHANDIGARH
PLOT NO 19,SECTOR 17-C,CHANDIGARH.

C.C.E.CHANDIGARH Appellant

Vs

M/S GOETZE INDIA LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1217 / 2008 –SM[BR] dated 21.8.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S GOETZE INDIA LTD.
   BAHADURGARH DISTT-PATIALA(PB)
2. Adv. / Consult SHRI RAVI RAGHAVAN ADV.
   N/ V.;--------------------
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)

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

Excise Appeal No. 3238 of 2006-SM

[Arising out of Order-in-Appeal No. 612/CE/CHD/2006 dated 07.07.2006 passed by the Commissioner (Appeals) Central Excise, Chandigarh]

Date of Hearing/ decision: 21.08.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, 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 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?	

CCE, Chandigarh — Appellant

Vs.

M/s Goetze India Limited — Respondent

Appearance:

Mr. R.K. Verma, Departmental Representative for the Appellant
Mr. Ravi Raghavan, Advocate for the Respondent

CORAM: Mr. Justice S.N. Jha, President

Final **ORDER** No. 1217/08-SM(BR)

Per S.N. Jha:

This appeal by the Revenue is directed against the Order-in-Appeal of Commissioner (Appeals), Central Excise, Chandigarh dated 7.7.2006 setting aside the Order-in-Original of the Assistant Commissioner dated 28.2.2006. By the said order, the Assistant Commissioner had confirmed duty demand of Rs. 2,38,625/- under Section 11A of the Central Excise Act, 1944 with interest thereon under Section 11AB of the Act and also imposed penalty equal to duty with option to deposit reduced penalty @ 25% as per proviso to the Section 11AC of the Act.

2. The respondent, M/s Goetz (India) Limited, are engaged in the manufacture of pistons & Gudgeon Pins falling under chapter 84 of the First Schedule to Central Excise Tariff Act. During audit of the records and pursuant to further enquiry it came to light that the appellant had cleared excisable goods worth Rs. 14,91,405/- without payment of duty under cover of documents which according to the Revenue was not valid document in terms of Rule 11 of the Central Excise Rules. The respondent were clearing goods through various depots situated at different places in the country which sometimes were returned by the depots on account of some defect for being re-made, re-conditioned or repaired etc. The case of the Revenue is that in terms of Rule 16 of the Central Excise Rules where any goods on which duty has been paid at the time of removal are brought to factory for being re-made, re-conditioned etc, the assessee is required to enter the particulars of such receipt in the records, take cenvat credit of duty paid on such goods treating them as inputs under Cenvat Credit Rules, 2002 and utilize credit as per the said rules. Where the process to which the goods are subjected again does not amount to manufacture, the manufacturer is required to pay the amount equal to cenvat credit taken by them as aforesaid, and in any case, pay duty on goods received as the rate applicable on the date of removal. The allegation against the respondent is that they failed to observe the procedure prescribed under Rule 16.

3. In course of hearing, learned DR submitted that though there is no such requirement in the Rules, in terms of the trade notice in the concerned Commissionerate, the respondent was further required to obtain permission from the competent authority; in any case, they were supposed to inform the authorities about the receipt of goods. It was submitted that ordinarily where the same goods are re-cleared after carrying out repairs etc., simple non-observance of

Rule 16 may not result in loss of revenue and it may only be a case of contravention of the rule, but there is no evidence to show that the goods re-cleared were the same goods which were received earlier. There could be chances of clandestine removal of goods, it was pointed out.

4. Learned Counsel appearing for the respondent submitted that on the receipt of goods in question, the respondent did not take cenvat credit on the defective goods and therefore there was no occasion to observe the formalities prescribed under rule 16. Counsel also submitted that the audit party verified the records but there is no allegation that the goods on second clearance were not the same goods which were received earlier. It was submitted that the goods had been received back from depots of the respondent and not from buyers, for re-conditioning on account of defects occurring in course of transportation which is a regular phenomenan. It was submitted that non-observance of Rule 16 was unintentional and bonafide and having realized the legal position emanating from the rule, the respondent is now complying with the requirement of the rule. Counsel submitted that in any view, in their own case and on identical issue and facts, a Single Member Bench of the Tribunal in Excise Appeal No. 2660 of 2006 –SM (BR) decided on 02.06.2008 has accepted the case of the respondent and upheld identical order of the Commissioner (Appeals) setting aside the adjudication order of the Assistant Commissioner.

5. As a general proposition I find merit in the submission of the learned DR that there must be evidence that the goods received for reconditioning, repairing etc. and the goods cleared again after completing the process are the same. Rule 16 lays down the procedure to check clandestine removal of goods on the pretext of reconditioning, repairs etc. Needless to say, that if the goods are subjected to the processes which would amount to manufacture, the manufacturer is required to pay duty by reversing the cenvat credit taken by them on receipt of the goods earlier. Indeed, where the law prescribes the procedure for doing something, it must be done in that manner. Rule 25(1)(d) of the Central Excise Rules,

2002/2004 provides for imposition of penalty in cases of contravention of any provision of the rules or the notification issued thereunder, and therefore for contravention of rule 16, the respondent could be saddled with penalty. But the liability to penalty under clause (d) is qualified by the words "with intent to evade payment of duty". Thus unless there is evidence showing mens-rea on the part of the manufacturer to evade payment of duty, perhaps no penalty can be imposed in terms of rule 25(1)(d). In the present case, the allegations against the respondent are more in the realm of suspicion than proof. All said and done, in view of the decision of the Tribunal in the own case of the respondent rendered on identical facts, it would not be appropriate to take a different view particularly in absence of cogent and sufficient material showing attempt to evade duty.

6. In the result, the appeal is dismissed.

[Dictated and pronounced in the open Court on 21.08.2008]

(Justice S.N. Jha)
President

[Pant]