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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/2777/2006-SM[BR]

Date 29/08/2008

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

To :
CCE JAIPUR I

NCR BUILDING,STATUE CIRLCE,C-SCHEME,JAIPUR

CCE JAIPUR I

Appellant

Vs

M/S KAIZEN ORGANICS P LTD

Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1220 / 2008 –SM[BR] dated 19.8.2008

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 KAIZEN ORGANICS P LTD

G-17&18,RIICO INDUSTRIAL AREA,EXTENSION-II,BAGRU,JAIPUR(RAJ)

2. Adv. / Consult SHRI V.N. SHUKLA 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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 2777 of 2006

(Arising out of Order-in-Appeal No. 174(MPM)CE/JPR-I/06 dated 19.05.2006 passed by the Commissioner of Central Excise (Appeals), Jaipur).

DATE OF HEARING : 19.08.2008
DATE OF DECISION : 19.08.2008

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 ?.	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	Yes
3.	Whether their Lordships wish to see the fair copy of the Order ?	[illegible]
4.	Whether Order is to be circulated to the Departmental Authorities?	Yes

CCE, Jaipur-I .... **Appellant**
(Rep by Sh. K.K. Goyal, Jt. CDR)

VERSUS

M/s Kaizen Organics (P) Ltd. .... **Respondent**
(Rep. by Sh. V.N. Shukla, Adv.)

CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT

Final **ORDER NO.** 1220/08-SM(BR)

PER JUSTICE S.N. JHA :

This appeal by the Revenue is directed against the order-in-appeal of Commissioner (Appeals-I), Central Excise, Jaipur, dated 19.05.2006 setting aside the order-in-original of the Assistant Commissioner dated 28.10.2005 by which 7200 kgs. of Essential Oil (Dementholised Oil) was confiscated with option to redeem the same on payment of redemption fine of Rs. 50,000/-, and penalty of Rs. 50,000/- was imposed in terms of Rule 25 of the Central Excise Rules, 2002.

2. It may be mentioned here that the goods were provisionally released to the respondent on furnishing bond of Rs. 3,99,514/- being the amount of excise duty chargeable on the goods and bank guarantee of Rs. 1,00,000/- be released at the time of payment of redemption fine. The goods are thus lying with the respondent awaiting result of the present appeal.

3. The respondent, M/s Kaizen Organics Pvt. Ltd., are engaged in the manufacture of Essential Oil (Dementholised Oil) falling under chapter sub-heading no. 3301.00 of the Central Excise Tariff. The officials of the Directorate General of Central Excise Intelligence (DGCEI), on receipt of information, visited the factory premises of the respondent and found 7200 kgs. of Dementholised Oil, packed in 40 drums, unaccounted in the daily stock as required under Rule 10 of the Central Excise Rules, 2002. The goods were seized and handed over to the authorized signatory of the respondent as custodian. The officials also seized certain documents for the

purpose of investigation. The statement of Director of the respondent company was recorded in course of investigation. He took the plea that the said stock of Dementholised Oil was awaiting approval by the customer, namely, M/s A.M. Todd & Co. Pvt. Ltd. The case of the respondent is that the goods kept in the drums were not finished products and, therefore, non-accountal thereof would not attract the provisions of clause (b) of Rule 25 of the Central Excise Rules. The learned Commissioner accepted the defence of the respondent. He observed that Dementholised Oil is manufactured as per specifications of the buyer, and unless it attains the desired standard, it cannot be said to be finished product and, therefore, 'excisable goods' within the meaning of clause (b) of Rule 25. The learned Commissioner rejected the contention of the Revenue that keeping of oil in drums was suggestive of the fact that the manufacturing process was complete in all respects.

4. Shri K.K. Goyal, Jt. CDR, appearing for the Revenue, submitted that a clear case of contravention of Rule 10 of the Central Excise Rules, 2002 is made out and, therefore, learned Commissioner committed error in setting aside the confiscation and imposition of penalty. Learned counsel for the respondent submitted that in the absence of any evidence suggesting clandestine removal of goods and/or intention to evade payment of duty, no case of confiscation of penalty was made out and, therefore, the Commissioner rightly set aside the order of the Assistant Commissioner and no interference is called for with the order-in-appeal at this stage. In support of his contention, he placed reliance

on **Bhillai Conductors (P) Ltd. vs CCE, Raipur,** 2000 (125) ELT 781 (T); and **Citizen Extrusion (P) Ltd. vs CCE, Surat-II,** 2007 (220) ELT 818 (T), in which it was held that in case of non-accountal of goods falling under clause (b) of Rule 173-Q of the Central Excise Rules, 1944 (corresponding to Rule 25 of Central Excise Rules, 2002/2004), unless there is an intention to evade payment of duty, neither goods can be confiscated nor penalty can be imposed. The submission of the learned counsel, thus, was that there must be *mens rea* on the part of the person to evade payment of duty and in absence thereof, no order of confiscation etc. can be passed. In reply, reliance on behalf of the Revenue was placed on the Larger Bench decision of the Tribunal in **CCE, Vapi vs Modison Ltd.,** 2006 (203) ELT 521 (T-LB), in which while dealing with the scope of clauses (a), (b) and (c) vis-à-vis clause (d) of Rule 173-Q of the old Rules, it was held that *mens rea* is not an essential ingredient to warrant confiscation and penalty under clauses (a), (b) and (c) in contrast to clause (d).

5. After considering the rival submissions of the parties, I am inclined to follow the decision of the Larger Bench in **CCE, Vapi vs Modison Ltd.** (supra) on the point. Non-accountal of goods which is an offence under clause (b) of Rule 25 may also amount to contravention within the meaning of clause (d) of Rule 25. The scope of clause (d), so far as contravention part is concerned, appears to be wider than clause (b). Clause (d) refers to contravention of "any of the provisions of these rules or the notifications issued under the rules", whereas clause (b) is limited to contravention of Rule 10 which deals with maintaining of daily stock

account, that is to say, accountal of the excisable goods in the concerned record, namely, RG-I. That appears to be the reason why in order to attract clause (d) there must be an intention to evade payment of duty while in the case of non-accountal simplicitor clause (b) would get attracted without the element of *mens rea* i.e intention to evade payment of duty.

6. It is not in dispute that the goods in question were not shown in RG-23-I. The submission of the learned counsel for the respondent was that clause (b) refers to 'excisable goods' and, therefore, until and unless the goods in question attained the state of marketability, they could not be said to be 'excisable goods'. It was submitted that Dementholised Oil, by its very nature, must conform to the specifications of the buyer and, therefore, where the goods are awaiting the approval of the buyer, they may not said to have become marketable and hence 'excisable goods', and thus non-accountal thereof would not attract clause (b) of Rule 25.

7. Having given my anxious consideration to the submissions of the counsel, I am unable to accept the same. The goods were found kept in sealed drums which, prima facie, is indicative of the fact that all stages and processes of manufacture were complete and the goods were lying in a ready-to-deliver or ready-to-sell condition. The fact that the goods are kept in sealed drums is a very strong circumstances to show the completion of manufacturing process, and that being so, I have no doubt that the 'excisable goods' had come into existence and, therefore, non-

accountal thereof as required under Rule 10 of the Central Excise Rules amounted to violation of Rule attracting clause (b) of Rule 25 - rendering the goods liable to confiscation etc. under the said Rule. The fact that the goods were awaiting approval of the buyer, if it was so, in my opinion, may be a relevant consideration on the point of imposition of penalty. Penalty can be imposed only when there is existence of *mens rea* and intention to evade payment of duty. In the facts and circumstances of the case, I am of the view that the respondent may not be saddled with penalty as there is no clear evidence suggesting clandestine removal of the goods or to intentionally evade payment of duty, and, therefore, imposition of penalty may not be upheld. However, as observed above, a case of violation of clause (b) of Rule 25 is made out and the goods were, therefore, liable to confiscation. As mentioned at the outset, the respondent was given option to redeem the goods on payment of redemption fine of Rs. 50,000/- which did not call for any interference by the Commissioner. The learned Commissioner, therefore, committed error in setting aside that part of the order of the Assistant Commissioner.

8. In the result, the order-in-appeal of the Commissioner is set aside to the extent he set aside the order of confiscation with option to take the goods on payment of redemption fine. The other part of the order setting aside penalty is upheld. The appeal is thus allowed in part to the above extent.

9. After the order was dictated, learned counsel for the respondent submitted that the bank guarantee may be released after appropriating the sum of Rs. 50,000/- in respect of redemption fine. The prayer is reasonable and it is ordered accordingly.

(Dictated and pronounced in the open Court on the 19th day of August, 2008)

(JUSTICE S.N. JHA)
PRESIDENT

Golay