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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/1831/2006-1832/2006-SM[BR]   Date 03/09/2008

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

1. M/S S N BROTHERS P LTD.
2. SHRI JOGINDER PAL
VILLAGE SAIDPUR,JATOLA ROAD,OCHANDI
BORDER,SONEPAT (HR)
M/S S N BROTHERS P LTD.   Appellant

Vs

C.C.E. ROHTAK   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1252 – 1253 / 2008 –SM[BR] dated 6.8.2008

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

Assistant Registrar

(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. ROHTAK
SCO NO,6 SECTOR 1, ROHTAK.
2. Adv. / Consult
MR.RAJEEV SINHA,CA
H-81,SARITA VIHAR,N.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. 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, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.1831 & 1832 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.84-85/GRM/RTK/2006 dated 28.02.2006 passed by the Commissioner of Central Excise (Appeals), Gurgaon]

Date of Hearing/ Decision:06.08.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? : No
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

(1) M/s.S.N. Brothers Pvt. Ltd.
(2) Shri Joginder Pal ....Appellants

[Rep. by Shri R. Sinha, Advocate]

Vs.

CCE, Rohtak ...Respondent

[Rep. by Shri Sumit Kumar, DR]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No.1252-1253/08-SM(BR)/Dated:06.08.2008

Per P.K. Das:

Both the appeals are arising out of a common order and, therefore, both are taken up together for disposal.

Both the appeals are arising out of a common order and, therefore, both are taken up together for disposal.

2. The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of Fluorescent Tube Light classifiable under sub-heading No.8536.90 of the Schedule to the Central Excise Tariff Act, 1985. On 13.2.2004, the Central Excise Officers visited the Appellant's factory. Shri Joginder Pal, Director of the Appellant in his statement dated 13.2.2004 stated that there was a breakage of 7-8% of Cenvated inputs viz. glass shells in transit. He further stated that breakage of tube shells is in the range of 25% to 40% during the course of manufacture. A demand of duty of Rs.2,36,079/- was raised on the breakage of glass shells during transit. The Adjudicating Authority confirmed the demand of duty and imposed penalty of equal amount along with interest. He also imposed penalty of Rs.10,000/- on the Appellant No.2. The Commissioner (Appeals) upheld the Adjudication Order.

3. Ld. Counsel on behalf of the Appellants submits that the Director of the Appellant-Company in his statement stated that breakage of glass shells of 7-8 % during transit is not corroborative with any evidence. He further submits that by letter dated 11.04.2005, they informed that they received the inputs in cardboard boxes duly sealed. He also submits that Revenue has confirmed the demand of duty on the basis of the statement of the Director and no inquiry was conducted. He also submits that Rule 6

payable. He relied upon the decision of the Hon'ble Supreme Court as under:-

(1) Collector of Central Excise Vs. Rajasthan State Chemical Works – 1991 (55) ELT 444 (SC)

(2) State of Haryana Vs. Dadri Cement Ltd. 2004 (168) ELT 13 (SC)

(3) BPL Display Devices Ltd. Vs. CCE, Ghaziabad 2004 (174) ELT 5 (SC)

He relied upon the decision of the Tribunal in the case of Hindustan Lever Ltd. Vs. Commissioner of Central Excise, Mumbai reported in 2004 (166) ELT 273 (T-M).

4. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the Director of the Company admitted the breakage of 7-8% during transit, which was not retracted by the Appellants, at any point of time. He further submits that the Appellants have not produced any evidence in support of their contention. Thus, the demand of duty and penalty are justified.

5. After hearing both the sides and on perusal of the records, it is seen that Rule 6 (2) of the Cenvat Credit Rules, 2004 provides where a manufacturer avails of Cenvat Credit in respect of any input and manufactures such final products, which are chargeable to duty as well as exempted goods, then the manufacturer shall maintain separate accounts for receipt, consumption, or inventory of inputs meant for use in the manufacture of dutiable and final products and the input meant for use of exempted goods and take Cenvat Credit only on that quantity of input,

which is intended for use in the manufacture of dutiable goods. So, Rule 6 (2) of the said Rules would not allow to take credit on the breakage during transit. Rule 6 provides obligation of manufacturer of dutiable and exempted goods, which is not applicable in the present case. So, the case laws cited by the ld. Advocate are not applicable herein. In the case of Hindustan Lever Ltd. (supra), the Tribunal allowed the Credit on Crude Glycerine received in tankers, part of such input was washed away and not used in the manufacture of finished products since they settled down as insoluble residue in transit. In present case, Credit was denied on inputs breakage in transit before the same were received by the Appellants in their factory. So, the facts of the present case is different from the decision of the Hindustan Lever Ltd. (supra).

6. I find that the Director of the Appellant Company in a statement admitted the breakage of 6-8% of glass shells during transit and no attempt was made by the Appellant to refute the statement by way of retraction and to produce any material. Therefore, the Adjudicating Authority rightly disallowed the credit on the breakage of Glass Shells during transit. Accordingly, I do not find any reason to interfere the order of the Commissioner (Appeals). Both the appeals filed by the Appellants are rejected.

Order dictated & pronounced in open court on 6.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.