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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/6253/2004 – SM[BR] E/ CO / 253 / 2006 Date 24/11/2008

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE Appellant
Vs
M/S VINDAS CHEMICAL INDUSTRIES P LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1499 / 2008- SM[BR] dated 22.8.2008

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 VINDAS CHEMICAL INDUSTRIES P LTD
   PLOT NO. 65, SECTOR I, INDL. AREA, PITHAMPUR, MP
2. Adv. / Consult SHRI DR. DARSHAN KATARIA, COMPANY MANAGER
   M/S RESPONDENT ;------------------------------

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 - 3
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
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-1
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16 Guard file

Assistant Registrar
(SM Appeal Branch)

N THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.6253 of 2004-SM (BR)
E/CO/253/2006-SM (BR)

[Arising out of Order-in-Appeal No.363-364-CE/IND/APPL-II/2004 dated 30.09.2004 passed by the Commissioner of Central Excise (Appeals), Indore]

Date of Hearing/ Decision:22.08.2008

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.

CCE, Jaipur ....Appellants
[Rep. by Shri S. Gautam, DR]

Vs.

M/s. Vindas Chemical Industries ...Respondent
[Rep. by Shri Dr.Darshan Kataria, Company Manager]

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

Final Order No.1499/08-SM (BR)/Dated:22.08.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Respondent, a SSI Unit, engaged in the manufacture of "P and P and Generic medicines" falling under sub-heading No.3003.10 and 3003.20 of the

Schedule to the Central Excise Tariff Act, 1985. On 23.12.98, the Central Excise Officers intercepted a truck carrying medicines loaded at respondent's factory accompanied with commercial invoice. In a follow up action, it was noticed that the Respondent removed the generic medicines without debiting the duty of Rs.12,210/-.The Central Excise Officers conducted stock verification and found excess quantity of finished goods valued at Rs.15,273/- and shortage of raw materials of valued at Rs.18,590/-.

2. The Adjudicating Authority confiscated the seized goods and vehicle and imposed redemption fine of Rs.50,000/- and Rs.25,000/- respectively. He directed recovery of duty of Rs.12,210/- against the seized goods loaded in vehicle and also confiscated the seized goods found excess at factory valued at Rs.15,273/- and other finished goods valued at Rs.26,71,585.00 and imposed redemption fine of Rs.4,000/- and Rs.20,000/- respectively. He also confirmed the demand of duty of Rs.2,365.00 and Rs.930/- on shortage and also imposed penalty of Rs.15,505/-. Revenue filed appeal before the Commissioner (Appeals) for enhancement of redemption fine. The Respondent filed appeal for setting aside the Adjudication Order. The Commissioner (Appeals) rejected the appeal of the Revenue and allowed the appeal of the Respondent. Hence, Revenue filed this appeal.

3. After hearing both the sides and on perusal of the records, it is seen that the central excise duty was levied on Generic medicines on 2.6.98.

The Respondent, a SSI unit, mainly engaged in the export of medicines. The central excise officers visited the Respondent's factory. They were availing SSI exemption for clearance of the goods for home consumption. On 30.09.2008 they started to pay the concessional rate of duty 5% Adv. It is seen from the Adjudication Order that they were following the procedure as prescribed in the Trade Notice for SSI unit on 25.03.94 issued by the Commissioner of Central Excise, Indore. It is seen from the Adjudication Order that on 23.12.98 they removed the goods valued at Rs.2,44,203.81 involving central excise duty of Rs.12,210/- accompanied with their commercial invoice no.435 to 450, all dated 23.12.98. It was explained by the Respondent that the supply was made to the Government of Kerala and their concerned person was on leave. They had also mentioned the amount of duty in their invoice. But the duty amount was not debited as their accounts person was on leave. They had sufficient balance of Rs.56,742/- in CENVAT Account. It was also stated that the alleged excess quantity of stock of Rs.15,273/- and the shortage of valued Rs.18,590/- were due to clerical mistake, which is negligible looking at the complexity of the manufacturing operation and volume of production and it cannot be presumed as unaccounted goods and there was no shortage of materials.

4. I find that the Adjudicating Authority observed the seizure of the entire quantity of finished goods valued Rs.26,71,505.60 apart from the excess alleged goods valued Rs.15,273/- is a technical nature. The

Commissioner (Appeals) also observed that the Respondent is a SSI unit due to irregular seizure of the finished goods they have suffered irreparable loss and their export business was hampered. The ld. DR during the course of hearing submitted that the Respondent cleared the goods without payment of duty and, therefore, confiscation of the seized goods is warranted. I agree with the submission of the ld. DR. But, I find that the appellant SSI unit was mainly engaged in the export business. It is seen that due to seizure of huge quantity of the goods as alleged excess quantity, the Respondent already suffered excessive. Taking into consideration the particulars facts and circumstance of the case, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the order of the Commissioner (Appeals) is upheld. The appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 22.08.2008.

(P.K. Das)
Member (Judicial)

Ckp.

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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

Date :26/05/2009

MISC Order No. 106 / 2009 –SM[BR]

Application E/ ROM / 60 / 2008 –SM[BR]IN

Appeal E/6253/2004 – SM[BR]

1. Appellant
   C.C.E. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10,
   INDORE 452001 (M.P.)
2. Respondent
   M/S VINDAS CHEMICAL INDUSTRIES P
   LTD
   PLOT NO. 65, SECTOR I, INDL. AREA,
   PITHAMPUR, MP
3. Adv / Consult : DR. DARSHAN KATARIA M.D.
   M/S RESP;---------------------------

4. C.D.R
5. Bar Association, CESTAT, New Delhi.
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi - 110003
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2 (OLD No.36),Vaithyaram Street, T. Nagar, Chennai 600017
9. Raghuraman's, 44 - B, Regal Flat,Shipra Suncity,Indirapuram,201010,Ghaziabad DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases, B-37, Sector -1, Noida - 201301 Gautam Budh Nagar, (U P)
11. Deeparchie Publications, M-93, Marg. 43, Saket, New Delhi - 110017.
12. Taxindiaonline.com Pvt.Ltd,B-XI/8183,Vasant Kunj,New Delhi -110070
13. Taxmann Allied Service Pvt. Ltd., 21/35, West Punjabi Bagh, New Delhi -110026
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

E/ROM application No. 60 of 2008-SM in Excise appeal No. 6253 of 2004-SM

CCE, Indore — Appellant,
Reptd. By Shri S. Gautam, D.R.

Versus

M/s. Vindas Chemical Inds. Pvt. Ltd., — Respondent
Reptd. By Dr. Darshan Kataria, M.D.

Date of Hearing/decision: 18th May, 2009

Coram: Shri P.K. Das, Member (Judicial)

MISC. ORDER NO. 106/09-SM (BR) dated 18.5.09

Per P.K. Das:

Revenue filed this application for rectification of mistake in Final Order No. 1499/08-SM(BR) dated 22nd August, 2008.

2. Learned D.R. on behalf of the Revenue submits that by Final Order No. 268/07-SM(BR) dated 15.1.2007 the Tribunal allowed the Revenue's appeal. He further submits that by subsequent Final Order dated 22nd August, 2008 against which this application has been filed, no reference was made for the earlier order. He further submits that an error apparent on the face of the record is that by Final Order dated 15.1.2007 appeal has already been disposed on merit and considering the submissions and, therefore, subsequent order may be rectified.

3. Learned Representative of the respondents submits that the Hon'ble Madhya Pradesh High Court by judgement dated 12.3.2008 set aside the order dated 15.1.2007. He further submits that the Tribunal in its order dated 2.6.2008 has recorded this fact.

4. After hearing both sides and on perusal of the records, I find that Hon'ble Madhya Pradesh High Court by judgement dated 12.3.2008 in M.A. (C.E.) No. 2841/2007 in the matter of Vindas Chemical Industries Pvt. Ltd. vs. UOI set aside the order dated 15.1.2007 passed by the Tribunal in this appeal. On perusal of the Final Order dated 22nd August, 2008, it is seen that the matter was decided in the presence of both the parties. So, contention of the learned D.R. that in Final Order dated 15.1.2007 appeal stands disposed of on merit is without any substance.

5. In view of the above discussion, I do not find any merit in the application. Accordingly, application filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

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