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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/509 /2007 – SM[BR] Date 26/11/2008

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

To :
M/S NEW FAQIR MOHD. TOBACCONIST
220/83,84,85, DARIYAI TOLA, LUCKNOW

M/S NEW FAQIR MOHD. TOBACCONIST Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1518 / 2008- **SM[BR]** dated 7.11.2008 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. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW
2. Adv. / Consult
   MR.R.S. SHARMA, ADV.,
   C-9/9656, VASANT KUNJ, NEW DELHI 110070
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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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

Excise Appeal No. 509 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 147-CE/2006 dated 04/09/2006 issued on 14/11/06 passed by The Commissioner, Central Excise & Service Tax, Lucknow.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 would 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 Department Authorities? :

M/s New Faqir Mohd. Tobacconist — Appellant

Versus

CCE, Lucknow — Respondent

Appearance

Shri R.S. Sharma, Advocate – for the appellant.

Shri A.K. Rastogi, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 07/11/2008.

Final Order No. 1518/08-SM(BR) Dated : 7-11-08

Per. Rakesh Kumar :-

The appellant are engaged in manufacture of chewing tobacco. ~~The~~ Their factory was visited by Central Excise Officers on 03/08/2005 and the stock taking of the finished goods was conducted. According to the department, certain stock of Chewing Tobacco – 469.900 kg. was found to be in excess of the stock recorded in the daily stock register. The goods were seized for non-accountal. Thereafter the Assistant Commissioner vide Order-in-Original dated 05/04/06 ordered confiscation of the seized tobacco valued at Rs. 54,501/- (Rupees Fifty Four Thousand Five Hundred and One only) under Rule 25 (1) (b) of the Central Excise Rules with option to be redeemed on payment of redemption fine of Rs. 15,000/- (Rupees Fifteen Thousand only) and duty and beside this also imposed penalty of Rs. 36,700/- (Rupees Thirty Six Thousand Seven Hundred only) almost equal to the amount of duty involved on the goods. The Commissioner (Appeals) vide the impugned order dated 04/09/06 dismissed their appeal.

2. Heard both the sides. The learned counsel for the appellant pleaded that more than half of the goods seized were in unpacked condition – were yet to be packed. He also pleaded that the goods seized represented a day's production, which would have been entered at the end of the day while the Central Excise officers visited the unit in the afternoon when the packing of the goods etc. were still in progress. He pleaded since the goods had not been removed, there was no justification for the officers to ~~seek~~ seize the same by invoking Rule 24 and thereafter confiscate of the goods. He cited the Tribunal's judgment in case of **Commissioner of Central Excise, Mumbai – III vs. Shree Rubber Plast Co. (P) Ltd.** reported in **2007 (220) E.L.T. 279 (Tri. – Mumbai),** wherein the Tribunal held that no penalty is imposable and goods cannot be confiscated when the same are in semi-finished condition and for this reason they had not been entered in the RG-1 register and in this case, the Tribunal has taken into consideration the Larger Bench's judgment in case of **CCE, Vapi vs. Modison Ltd.** reported in **2006 (203) E.L.T. 521 (Tri. – L.B.).** He also cited the Hon'ble Punjab & Haryana High Court's judgment in the case of **CCE, Jalandhar vs. Indo German Fabs.** reported in **2007 (209) E.L.T. 184 (P & H)**, wherein the Hon'ble High Court upheld the Tribunal's order holding that confiscation and penalty

for non-accountal of excisable goods was ~~excisable~~ attracted only when mens rea on the part of the ~~goods~~ [illegible] was proved.

3. The learned departmental representative pleaded that this is the case of non-accountal of the excisable goods in the statutory records which the appellant were required to main and that from the findings of the Commissioner (Appeals) in para '6' of the impugned order, it is clear that the appellant were not maintaining the account of production and clearance on day-to-day basis. He relied upon the Larger Bench's judgment in the case of CCE, Vapi vs. Modison Ltd. (Supra), wherein it was held for imposition of penalty under Clause a, b & c of sub-rule 1 of Rule 173Q which is para-meteria with Rule 25 (1) of Central Excise Rules, 2002 mens rea is not required to be proved.

4. I have carefully considered the submissions from both the sides. From para 6 of the Commissioner (Appeals) order it is found that the appellants were maintaining the account of production and clearance of the goods in RG-12 format prescribed under Rule 94 of the old Central Excise Rules, 1944 and from the findings of the Commissioner in the impugned order, it is clear that this account was not being maintained ~~as~~ on day-to-day basis. Since, this is the only account of Chewing Tobacco, which was being maintained by the appellant and since it was not being

maintained in a proper manner, the provisions of Rule 10 of the Central Excise Rules, 2002, which require a manufacturer to maintain stock account of the excisable goods manufactured by him, has been contravened and thereby attracting the provisions of Clause b of sub-rule 1 of Rule 25 of Central Excise Rules. I, therefore, uphold the Commissioner (Appeals)'s order with regard to confiscation and imposition of penalty. However, looking to the circumstances of the case and the fact that some of the goods, which were placed under seizure, were yet to be packed in cartons, the penalty is reduced to Rs. 10,000/- (Rupees Ten Thousand only) and redemption fine is reduced to Rs. 5,000/-. (Rupees Five Thousand only). The Commissioner (Appeals) stands modified, as above.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK

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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 : 11/06/2009

MISC Order No. 117 / 2009 -SM[BR]
Application E/ ROM / 11 / 2009 -SM[BR]
Appeal E/509/2007 - SM[BR]

1. Appellant
   M/S NEW FAQIR MOHD. TOBACCONIST
   220/83,84,85, DARIYAI TOLA, LUCKNOW
2. Respondent
   C.C.E. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW
3. Adv / Consult :
   MR.R.S. SHARMA, ADV.,
   C-9/9656, VASANT KUNJ, NEW DELHI
   110070
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
(SM Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Rectification of Mistake Application No. 11 of 2009 in Appeal No. 509 of 2007 (SM)

M/s New Faqir Mohd. Tobacconist — Appellant

Versus

CCE, Lucknow — Respondent

Appearance

Shri R.S. Sharma, Advocate – for the appellant.

Shri S.K. Verma, Authorized Representative (DR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 29/05/2009.

Misc Order No. 117/09-SM CBM Dated : 29.5.09

Per. Rakesh Kumar :-

This is a ROM application filed by the Revenue for rectification of mistake apparent from the record, in para one of the final order No. 1518/08- SM (BR) dated 07/11/08. The first para of the order, with regard to the order-in-original dated 05/04/06 passed by the Commissioner, mentions that -"the

Assistant Commissioner has ordered confiscation of the seized tobacco valued at Rs. 54,501/- (Rupees Fifty Four Thousand Five Hundred and One) under Rule 25 (1) (b) with option to be redeemed on payment of redemption fine of Rs. 15,000/-." Both the sides have pointed out that the redemption fine imposed by Assistant Commissioner was Rs. 50,000/- (Rupees Fifty Thousand) not Rs. 15,000/- (Rupees Fifteen Thousand), which is clear from the last para of the order-in-original dated 05/04/06. I am, therefore, satisfied that this is a mistake apparent from the records. Accordingly, I order that the words "Rs. 15,000/- (Rupees Fifteen Thousand)" in the 12th line of the first para of the final order may be read as "**Rs. 50,000/- (Rupees Fifty Thousand)**". The order stands modified, as above.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

PK