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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/643 /2007-644 /2007 – SM[BR] Date 27/11/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S KUBER KHAINI (P) LTD.
2. SH. HARSHARAN LAL, DIRECTOR, M/S KUBER KHAINI (P)

32-K, SIRASPUR, DELHI- 110042

M/S KUBER KHAINI (P) LTD. Appellant

Vs

C.C.E. NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1536 - 1537 / 2008- **SM[BR]** dated 24.9.2008

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. NEW DELHI

C.R. BUILDING, I.P. ESTATE, NEW DELHI
110002

2. Adv. / Consult
MR.BHASIN SETHI & ASSICIATE

401,SATYAM CINEMA BUILDING,RANJEET NAGAR,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 - 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). Thyagarava 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
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

Appeals Nos.E/643- 644/2007-SM (BR)

[Arising out of common Order-in-Appeal No.105-106/CE/DLH/2006 dated 15.12.2006 of the Commissioner of Central Excise (Appeals), New Delhi]

Date of Hearing/ Decision:24.09.2008

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. Kuber Khaini Pvt.Ltd.
(2) Shri Harsharan Lal, Director of Kuber Kahaini ...Appellants
[Rep. by Shri Bhasin Sethi, Advocate)
Vs.
CCE, New Delhi ...Respondent
[Rep. by Shri K.K. Goyal, Jt. CDR]

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

Final Order No.1536-1537/08-SM(BR)/Dated:24.09.2008

<u>Per P.K. Das :</u>

The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of "Kuber" brand khaini classifiable under sub-heading No.2404.41 of the Schedule to the Central Excise Tariff Act,

1985. On 20.4.2004, the Central Excise Officers searched the godown and office premises of M/s. Diamond Transport Corporation, Plot No.3, Kh. No.1189, Village Bhalswa, Delhi and found 140 boras of Kuber brand khaini without the cover of any duty paying documents. Shri Harsharan Lal, Director of the Appellant No.1 Company in his statement dated 21.4.2004 admitted that the goods were cleared without payment of duty and immediately handed over a cheque of Rs.2,00,491/- towards central excise duty for the clearance of the said goods. The Adjudicating Authority confiscated the seized goods and imposed redemption fine of Rs.1,00,000/-. He also confirmed the demand of duty of Rs.2,00,491/- and appropriated the said amount as already deposited by them. He further imposed a penalty of equal amount of duty under Section 11 AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2005 upon the Appellant No.1 and penalty of equal amount of duty was imposed on the Director, Appellant No.2 herein. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld.Advocate submits that the Appellant No.2, Shri Harsharan Lal, Director of the Appellant Company in his statement stated that the due to absence of the dealing person, they removed the goods without payment of duty. He further submits that the Appellants immediately deposited the duty before issue of show cause notice and, therefore, penalty of equal amount of duty under Section 11 AC is not justified. He further submits that there is no mala fide on the part of the Appellants and confiscation of the goods is not sustainable. He also submits that the Appellant No.2 in

his statement stated that he had no knowledge of the removal of the goods and penalty is not imposable. He also submits that fine and penalties are excessive ~~exclusive~~.

3. Ld. Jt. CDR reiterates the findings of the Commissioner (Appeals). He submits that it is a case of clandestine removal of the goods, which is admitted by the Appellant No.2. He further submits that the market value of the goods is Rs.6,68,304/- and therefore, redemption fine of Rs.1,00,000/- is justified. He further submits that the Appellant No.2 is the Director of the Company and overall incharge of the Company and penalty of equal amount of duty is legal and proper.

4. After hearing both the sides and on perusal of the records, I find that the Appellant No.2 admitted in his statement that the goods were cleared without payment of duty as the buyer was pressing hard for urgent delivery. Thus, it is a clear case of clandestine removal of the goods and penalty under Section 11 AC of the Act is warranted. The Hon'ble Delhi High Court in the case of Commissioner of Central Excise Vs. Malbro Appliances Ltd. reported in 2007 (79) RLT 109 (Delhi) held that first proviso to Section 11 AC (1) of the Central Excise Act, 1944 provides penalty of 25% of duty if the assessee deposited the duty within 30 days of the order. In the present case, the Appellants deposited the penalty of 25% of duty before issue of show cause notice. So, the penalty on Appellant No.1 is reduced to 25% of duty (i.e. Rs.50,123/-).

5. Regarding confiscation of goods and imposition of redemption fine, it is seen that the goods were cleared without payment of duty and it

was found during the search of the godown. So, confiscation of the goods and imposition of redemption of fine are sustainable. But, the redemption fine is reduced to Rs.50,000.00.

6, It is noticed that the Appellant No.2 upon detection of clandestine removal of goods, deposited the duty. So, it is seen that Shri Harsharan Lal, Director, Appellant No.2 had admitted the clandestine removal of goods and knowledge of the removal of the goods and the imposition of penalty is justified. It is seen that the penalty on the Company has already been reduced to 25% of duty and the Appellant No.2 admitted the lapse and deposited the duty immediately. Taking into consideration of the facts and circumstances of the case, the penalty on Appellant No.2 is reduced to Rs.50,000/-.

7. To sum up, in Appeal No.E/643/2007 (Appellant No.1) duty upheld, penalty and fine are reduced to Rs.50,123.00 and Rs.50,000.00 respectively. In Appeal No.E/644/2007 (Appellant No.2) penalty is reduced to Rs.50,000.00. Both the appeals are disposed of in the above terms.

Order dictated & pronounced in open court on 24.09.2008.

(P.K. Das)
Member (Judicial)

Ckp.