TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/709 /2007 – SM[BR] Date 01/12/2008

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

To :
M/S K.P. POUCHES (P) LTD
46, RAMA ROAD, NEW DELHI
110015

M/S K.P. POUCHES (P) LTD Appellant

Vs

C.C.E NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1557 / 2008- **SM[BR]** dated 25.11.2008 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 NEW DELHI
DELHI-I, C.R. BUILDING, I.P.ESTATE, NEW DELHI
110002
2. Adv. / Consult
MR.J.S.SINHA
4-E, 4TH FLOOR, WORLD TRADE TOWER BARAKHAMBA LANE, NEW DELHI-1

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
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. 709 of 2007-SM

(Arising out of Order-in-Appeal No. 99-100/CE/DLH-2006 dated 15.11.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Delhi-I).

DATE OF HEARING : 25.11.2008
DATE OF DECISION : 25.11.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MS. JYOTI BALASUNDARAM, VICE-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 ?	No
3.	Whether their Lordships wish to see the fair copy of the Order ?	Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	Yes

M/s K.P. Pouches (P) Ltd. .... **Appellants**
(Rep by Sh. J.S. Sinha, Adv.)

versus

CCE, New Delhi .... **Respondent**
(Rep. by Sh. S.K. Panda, DR)

CORAM : HON'BLE MS. JYOTI BALASUNDARAM, VICE-PRESIDENT

Final **ORDER NO.** 1557/08-SM (PB)

PER JYOTI BALASUNDARAM :

On 25.06.2004, search was conducted at the factory premises of the appellant Company and during the course thereof stock of finished products was verified. It was found that a certain quantity of RAJSHRI brand Gutkha and MADHUBAN SAFAL Gutkha totally valued at Rs. 1,08,855/- was lying in excess ~~to~~ of the recorded balance in the daily stock account maintained by the appellants. No satisfactory explanation was offered for the excess stock which was, therefore, seized under the reasonable belief that it had been kept unaccounted with an intent to remove the same without payment of duty and hence was liable to confiscation. The statement of the Director of the appellant Company was recorded in which he acknowledged the recovery of excess stock and admitted that the quantity of Gutkha seized had been manufactured out of unaccounted raw material and that the seized stock was deliberately not entered in the daily production records. A show cause notice dated 22.12.2004 was issued to the assessees proposing confiscation of the seized goods, levy of duty of Rs. 32,657/-, and imposition of penalty on the Company and its Director, which was adjudicated by the Deputy Commissioner, who confirmed the duty demand, imposed penalty of equal amount upon the Company and a penalty of Rs. 15,000/- upon its Director, and also confiscated seized goods with an option to redeem the same on payment of fine of Rs. 30,000/-. The Commissioner (Appeals) set aside the duty demand on the ground that the charge of clandestine removal was not established by the

Department; however, he upheld the confiscation of the seized goods on the ground that, admittedly, they were not properly accounted for as they had been manufactured out of unaccounted raw material and reduced the fine in lieu of confiscation to Rs. 20,000/-, penalty on the Company to Rs. 20,000/-, and penalty on its Director to Rs. 10,000/-. It is only the appellant Company which has come up in appeal before the Tribunal against the order of the Commissioner (Appeals).

2. I have heard both sides and find that the confiscation of the goods is required to be upheld in the light of the admission by the Director that the seized Gutkha had been manufactured out of unaccounted raw material and it is for this reason that the Gutkha was not accounted for in the statutory records. The value of the seized goods being to the tune of Rs. 1,08,855/-, the fine and penalty also do not call for any interference.

3. The impugned order is, therefore, upheld and the appeal is rejected.

(Dictated and pronounced in the open Court on the 25th day of November, 2008)

(JYOTI BALASUNDARAM)
VICE-PRESIDENT

Golay