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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/903 /2007-904 /2007 – SM[BR] Date 04/12/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. SUPER CASSETTES INDUSTRIES LTD.
2. SHRI D.K.KAKKAR FACTORY MANAGER
C-25 & 26, SECTOR-3, NOIDA (U.P.)

SUPER CASSETTES INDUSTRIES LTD. Appellant
Vs
C.C.E, NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1575- 1576 / 2008 SM[BR]** dated 30.10.2008 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, NOIDA
B-23, SECTOR-5, NOIDA.
2. Adv. / Consult
MR.PRABHAT KUMAR
B-51(BASEMENT)SARVODAYA ENCLAVE NEAR MOTHER INTERNATIONAL SCHOOL NEW 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), 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
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal Nos.903-904/2007-SM9BR)

(Arising out of order in appeal No.156-157/CE/Appl/Noida/06 dated 22.12.06 passed by the Commissioner of Central Excise (Appeals), Noida)

For approval and signature:

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

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 should 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 Departmental authorities?

NA

Yes

1. M/s Super Cassettes Industries Ltd Appellant
2. Shri D.K. Kakkar (Rep. by Shri Prabhat Kumar, Advocate)

Vs

CCE, Noida Respondent
(Rep. by Shri S.K. Bakshi, DR)

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

Date of Hearing: 30 .10.08

Final Order No. 1575-1576 /2008-SM(BR)

Per P.K. Das:

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

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Audio Compact Disc, C.D Rom, Digital Video Discs, CD(Writable), Video Cassettes (Blank), etc. They were availing Cenvat credit fully. On 30.6.2003, the Central Excise officers visited the appellants factory and conducted stock verification. The said officers detected shortage and excess of different variety of finished goods.

3. Shri D.K.Kakkar, Factory Manager in his stated dated 1.7.2003 admitted the shortage and excess of finished goods and agreed to pay the duty on the shortage. They deposited the duty vide PLA debit entry No.9 dated 9th July, 2003. A show cause notice dated 24th December, 2003 was issued to appropriate the amount as deposited by them and to confiscate the excess quantity of goods and to impose penalty on the appellants. The Adjudicating Authority confirmed the demand of duty of Rs. 3,55,098/- and appropriated the said amount as deposited by them. He confiscated the seized goods involving Central Excise duty of Rs.3,67,601/- and redeemed the same on payment of a fine of Rs.2,50,000/-. He also imposed a penalty of Rs. 2 lakhs on the appellant company and penalty of Rs.50,000/- on the appellant No.2, i.e. Factory Manager and authorized signatory. The Commissioner (Appeals) rejected the appeal filed by the appellants.

4. The learned Advocate submits that no stock taking was conducted. He further submits that there was a huge quantity of raw material and finished goods which cannot be verified within a period of few hours. It may require 15 to 20 days. He further submits that the appellants repeatedly requested to disclose the calculation sheet of stock verification which was not disclosed at any point of time. He further submits that the statement of Shri D.K.

Kakkar is contrary to the evidence and therefore, such statement is not reliable. He also submits that the finding of the Commissioner (Appeals) that the goods were clandestinely removed is without any basis. He relied upon various decisions of the Tribunal on this issue. He also submits that there was no excess quantity of goods and confiscation is not sustainable.

5. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that the representative of the appellants accepted the shortage and deposited the duty. He further submits that no protest was lodged against the stock taking before issuance of show cause notice. Therefore, the appellant cannot dispute the method of stock taking at this stage.

6. After hearing both the sides and on perusal of the record, it is revealed from the adjudication order that the adjudicating authority considered the complaint of the appellant that no stock taking was conducted. The relevant portion of the order is reproduced below:-

"*The Additional Commissioner (Anti-Evasion) Central Excise Noida by his letter dated 2nd August, 2005 informed that:-*

The physical counting was done before the Director/Authorized Signatory and other representatives of the unit in presence of independent witnesses which is recorded in panchnama. As per panchnama, no such work sheets were prepared and presented. All details regarding stock verification are in annexures to panchnama".

7. The learned DR drew attention of the Bench to the copy of stock verification report. It is seen that the representative of the appellant has signed the verification report without any objection. It is noted that the appellant deposited the duty after six days of the detection of shortage without any protest. In my view, the adjudicating authority rightly

appropriated the amount of duty as deposited by the appellants on the shortage of goods. So, I do not find any merit in the submission of the learned Advocate in respect of shortage of finished goods detected during stock verification

8. Regarding excess quantity of goods, it is seen from the stock taking report of finished goods that there was 21 items of different variety of finished goods found in excess and shortage. The adjudicating authority observed that it is established the goods found short were removed clandestinely and those goods found in excess during recorded balance, manufactured and stored.

9. On a perusal of the record, I do not find any material that the excess quantity was stored for clandestinely removal. So, it may be a case of non-accountal of goods. I find that the appellant failed to give any reasonable explanation for the non-accountal of excess quantity of goods. Therefore, the confiscation of excess quantity of goods is justified. The learned Advocate contended that there is a number of judgments, that non-accountal of goods cannot be confiscated. I find that the appellants failed to give any explanation on the excess quantity and therefore, the confiscation of goods is upheld. As it is a case of non-accountal of goods, the amounts of redemption fine and penalty are reduced to Rs.75,000/- and Rs.50,000/-.

10. It is seen that Shri D.K. Kakkar, appellant No.2, is authorized signatory of the company. He is mere an employee of the company and no material is available for imposition of penalty on the employee of the company. Accordingly, penalty imposed on Appellant No.2 is set aside. Appeal of Appellant No.2 is allowed.

11. The impugned order against Appellant No.1 is modified in the above terms.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*