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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/3014/2006-SM[BR] Date 16/04/2008

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

To :
SARLA FABRIC PVT LTD
30,LONI ROAD INDUSTRIAL AREA,MOHAN
NAGAR,GHAZIABAD(UP)
SARLA FABRIC PVT LTD Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 639 /2008 –SM[BR] dated 20.3.2008

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. GHAZIABAD

C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
2. Adv. / Consult SHRI B. PARMESHWARA
M/S APPELLANT;------------

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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.3014 /2006 -SM

(Arising out of order in appeal No.92/CE/Gzb/06 dated 10.7.06 passed by the Commissioner of Central Excise (Appeals),Meerut)

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?

yN

M/s Sarla Fabric Pvt Ltd — Appellant
(Rep. by Shri B. Parmeshwaram, Authorized Rep)

Vs

CCE, Meerut-I — Respondent
(Rep. by Shri S.L. Meena, DR)

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

Date of Hearing: 20.3.2008

Final Order No. 639 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of grey fabrics. On 19.7.2002, the Central

Excise officers visited their factory and conducted stock taking. During stock verification, the Central Excise officers detected the shortage of finished goods of 52162.15 Sq. Mts of different types and also recorded statement of Shri Dilip Kumar, Authorized Signatory of the appellant. Shri Dilip Kumar next day by letter dated 20.7.2002 retracted the statement. A show cause notice dated 24.12.03 was issued proposing payment of duty and imposition of penalty. By letter dated 25.2.2004, the Assistant Commissioner of Central Excise, Ghaziabad informed Shri Dilip Kumar that the retraction of statement submitted by him does not appear to be acceptable. The adjudicating Authority confirmed the demand of duty and imposed penalty of equal amount, which is upheld by the Commissioner (Appeals).

2. The learned Representative for the appellants placed a copy of letter dated 20.7.2002. He submits that there was no shortage of goods and alleged quantity was kept in bad condition which was recorded by letter dated 20.7.2002. He submits that both the authorities below failed to take into consideration the retraction of the statement in proper manner.

3. The learned DR on behalf of the Revenue, reiterates the findings of the Commissioner (Appeals). He submits that both the authorities below have discussed and rejected the retraction of statement.

4. After hearing both the sides and on perusal of record, I find that on 19.7.04, the Central Excise officers detected the alleged shortage of finished goods and recored the statement of Shri Dilip Kumar, Authorised Signatory of the appellant. I find that Shri Dilip Kumar by his letter dated 20.7.2002, complained to the Commissioner of Central Excise (Preventive) as under:-

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5. I find that while issuing show cause notice, the aforesaid letter dated 20.7.2002 was not mentioned therein but the Assistant Commissioner of Central Excise by his letter dated 25.2.2004 (i.e. after the issue of show cause notice and before passing of the impugned order) informed that the retraction submitted by Shri Dilip Kumar does not appear to be acceptable. It is noticed that both the authorities below had not discussed the retraction of the statement by the Authorized Signatory on the very next day of the date of visit. As such, the impugned order is set side and the matter is remanded back to the Adjudicating Authority to examine the retraction of the statement by the authorized signatory of the appellant and to pass denovo order in accordance with law. Needless to say, that the appellants shall be given proper opportunity of hearing to the appellants. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*

REF-PPTIL/01

20.07.02

To
Commissioner
(Preventive)
Central Excise
Meerut.

Subject: Retraction of statement made by Mr. Dilip Kumar, in PLA during preventive checking on 19.7.2002.

Dear Sir,

This is to bring to your kind notice that during the Preventive Checking carried out by the officers of Central Excise, I was forced and coerced early morning at 1.30 Am to sign a prepared statement prepared by the officers of the Preventive Wing. This statement was written as directed by the said officers in the PLA Register and I was forced to sign the said prepared statement.
During the entire Preventive Checking nothing objectionable was found. Allegations made in the prepared statement are three fold:
(i) alleged shortage of goods
(ii) payment for value addition of 15% under Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000
(iii) Interpretation of exemption Notification 6 of 2002 dated 1.3.2002 in respect of applicability of duty on 'processed embroidery fabric'.
Initially, there is no shortage of goods.
Secondly, the value addition does not arise as Rule 8 is not applicable and the stock transfer is not applicable. Likewise, we are entitled to the benefit of Exemption Notification.
I had no option but to sign this prepared statement as the checking continued for a period of 14 hours right upto night 0130 hrs and I was repeatedly threatened that if I do not sign the same, I alongwith the General Manager Mr. Pradeep Pathak would be arrested and detained in custody. I was also told that I would not be able to get bail.
I want to respectfully submit that we are tax payers and have paid huge amounts towards excise duty. We are a law abiding company. We are suffering losses and we are not able to pay on account payment of Rs. 10 Lacs.
As a result of the various threats meted out to me, I suffered a nervous break down and had to take medical help and was admitted in the Nursing Home. I am filing this retraction at the earliest and at the first available opportunity.
I make it clear that I and my company are ready and willing to fully cooperate with the Department in respect of any investigation which may be carried out.
Yours truly

Dilip Kumar
(Authorised signatory)