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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/3411/2006-SM[BR] Date 05/05/2008

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

To :
R.R. PRODUCTS (P)LTD.
KISHANPURA VILLAGE, PIPLI KURUKSHETRA,
HARYANA.

R.R. PRODUCTS (P)LTD. Appellant

Vs

C.C.E.DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 684 /2008 –SM[BR] dated 25.4.2008 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.DELHI III
   UDYOG VIHAR, UDYOG MINAR, VANIJYA NIKUNJ, PHASE-V, GURGAON.
2. Adv. / Consult
   MR.SURESH AGGARWAL
   1324, SECTOR-28, FARIDABAD
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeal No. 3411 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.219/NS/PCK/2006 dated 27.7.2006 passed by the Commissioner of Central Excise (Appeals), Gurgaon]

Date of Hearing:19.3.2008
Date of Decision: 25/4/08

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? :
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

M/s. R.R. Products (P) Ltd. ...Appellants
[Rep. by Shri Suresh Agarwal, Advocate]

Vs.

CCE, Delhi-III ...Respondent
[Rep. by Shri S.L. Meena, Authorized Representative (DR)]

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

Final Order No. 684/08-SM(BR)/Dated:

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of Mosquitoes Insecticides Coils classifiable under Sub-heading no.3808.10 of the Schedule to the Central Excise Tariff Act, 1985. On 2nd January, 2001, the Central Excise Officers visited the Appellant's factory and they came across two separate sets of invoice books. The Central Excise Officers recorded the statement dated 9.1.2001 of Smt. Nirmal Jhelum, Director of the Appellant-Company. Show cause notice dated 27.4.2004 was issued proposing demand of duty of Rs.2,55,528/- on the basis of invoice books, which is called as parallel invoices. It is also proposed penalty on the Appellant-Company and its Director. The Adjudicating Authority dropped the proceedings against the Appellant and its Director. Revenue filed an appeal before the Commissioner (Appeals), whereby Adjudication Order was set aside and confirmed the demand of duty of Rs.2,55,528/- and imposed penalty of equal amount on the Appellant Company and also imposed penalty of Rs.5,000/- on Smt. Nirmal Jhelum, Director of the Appellant-Company. The Appellant-Company filed this appeal against the order of the Commissioner (Appeals).

2. Ld. Advocate on behalf of the Appellant submits that the Director of the Appellant-Company in his statement dated 9.1.2001 stated that

due to change of purchase order rates, they maintained separate invoice books. He further submits that the Adjudicating Authority inquired the matter through the Central Excise Authorities at destination's end and thereafter, dropped the proceedings. He also submits that the Commissioner (Appeals) did not dispute the inquiry conducted by the Adjudicating Authority and passed the order simply on the basis of allegation of show cause notice. He relied upon the decision of the Tribunal in the case of Arch Pharmalabs Limited Vs. CCE, Hyderabad reported in 2005 (182) ELT 413 (Tribunal-Bangalore). He also relied upon the decision of the Tribunal in the case of Commissioner of Central Excise, Meerut Vs. Moon Beverages Ltd. Reported in 1999 (33) RLT 153 (CEGAT).

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the Debit Entries in the RG-23 C Part-II Account matches to the clearances made to the invoices bearing round seal of pre-authentication and not to invoices having rectangular seal. He also placed the chart showing the difference between the two sets of invoices.

4. After hearing both the sides and on perusal of the records, it is seen that the two separate sets of invoice books were found at the Appellant's premises, which were called as parallel invoice. Smt. Nirmal Jhelum, Director of the Appellant-Company in her statement dated 9.1.2001,

stated that due to change of Purchase Order Rates and involvement of Sales Tax on such rates, they had to use two sets of invoices. It is seen that the Adjudicating Authority conducted inquiries through the Central Excise Authorities at destination's end. For proper appreciation of the case, the relevant portion of the findings of the Adjudicating Authority is reproduced below:-

> "16. I have examined the invoices issued from the invoice books and found that invoices bearing serial no.1 to 5 have been issued to the same customers with the same destinations. The buyer in all these cases is M/s. Godrej Sara Lee Ltd. The quantity of goods, assessable value and Central Excise duty involved in all these cases is same in both sets of invoices. Other particulars including Mode of transport, date and time of removal etc. are same. The above facts show that both sets of invoices pertains to the same transactions. On enquiries conducted through the Central Excise authorities at destinations end, it was revealed that the consignee have received goods as per invoices bearing rectangular seal of authentication. This shows that Central Excise duty has been discharged on invoices bearing rectangular seal of authentication.
>
> 17. In view of the above facts, I observe that other sets of invoices bearing round seal of authentication and containing all the information as mentioned on the invoices bearing rectangular seal of authentication and were issued because of the change of purchase order rates and involvement of sale tax on such rates they had to use parallel invoices. From the statement dated 9.1.2001 of Smt. Nirmal Jhelum, Director, I also find that she had attributed use of these two sets of invoices to the change of purchase orders rates and involvement of sale tax on such rates.
>
> 18. I find that the noticee is engaged in the manufacture of Mosquito Coils under the brand name

> of Godrej and 100% supplies are to M/s. Godrej Sara Lee Ltd., who are providing the packing material. In absence of any allegation or any proof thereof regarding supply of extra packing material by the customer, purchase of extra raw material or mode of despatch in relation to goods alleged to be clandestinely removed, the allegations contained in the Show Cause Notice are not substantiated."

5. The Commissioner (Appeals) had not disputed the above findings of the Adjudicating Authority. It has been observed by the Commissioner (Appeals) that in the invoices bearing serial numbers 1 to 5 with rectangular seal, the duty debit particulars shown as entry nos.7, 2, 3, 4 and 5 respectively do not match with debit entries in RG-23-C, Part-II and, therefore, the debit entries shown in the invoices bearing rectangular seal are fake. Ld. DR demonstrated the difference between the two sets of invoices by placing chart. I find that the Director of the Appellant-Company in her statement before the Central Excise Officers stated that because of change of Purchase Order rates, they prepared two sets of invoices. There is no material of clandestine removal of the goods on the basis of the invoices. I find that the adjudicating authority dropped the proceedings after conducting the inquiries through the Central Excise Officers. It is noted that the Appellant is engaged in the manufacture of Mosquitoes Coils under the brand name of Godrej and entire supplies were made to M/s. Godrej Sara Lee Ltd., who were providing packing materials. The Commissioner (Appeals) passed the order merely on the basis of difference of two sets of invoices, which were explained by the

Appellant and verified by the Adjudicating authority. So, I do not find any merit in the finding of the Commissioner (Appeals) and the order of the Commissioner (Appeals) is not sustainable. Accordingly, the order of the Commissioner (Appeals) is set aside and the order of the Adjudicating Authority is restored. The appeal is allowed with consequential relief.

(Order pronounced in open court on 25/4/08)

(P.K. Das)
Member (Judicial)

Ckp.