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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/3702/2006-SM[BR] Date 12/05/2008

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

To :
M/S PHOOL CHAND SALES CORPN

24, BATASHAWALI GALI, AMINABAD, LUCKNOW.

M/S PHOOL CHAND SALES CORPN Appellant

Vs

C.C.E.LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 734 /2008-SM[BR] dated 4.3.2008

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.LUCKNOW

   7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult

   MR.K.K ANAND

   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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)

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

E/Appeal No.3702 /2006-SM

(Arising out of order in appeal No.103/CE/2006 dated 28.7.06 passed by the Commissioner of Central Excise (Appeals), Lucknow)

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?

M/s Phool Chand Sales Corporation Appellant
(Rep. by Shri K.K. Sharma, Advocate)

Vs

CCE, Lucknow Respondent
(Rep. by Shri S.L. Meena, DR)

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

Date of Hearing: 4 .3.2008

Final Order No. 734 /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 Gutkha and Pan Masala containing tobacco classifiable under sub-heading 2404.49 to the Schedule to the Central Excise

Tariff Act, 1985. On 27.12.03, the Central Excise officers visited the appellants factory and conducted stock taking and found excess quantity of finished goods against the recorded balance and shortage of raw material. The Adjudicating authority confiscated the excess quantity of finished goods and imposed redemption fine of Rs. 40,000/- and penalty of Rs. 47,175/-. He dropped the demand of duty on the shortage of raw material. The Commissioner (Appeals) upheld the adjudication order.

2. The learned Advocate on behalf of the appellants submits that it is a case of non-accountal of finished goods lying in the appellants factory. There is no material for removal of goods with intent to evade payment of duty and therefore, confiscation of goods is bad in law. He relied upon the decision of the Hon'ble High Court of Madhya Pradesh in the case of Supreme Industries Vs CESTAT reported in 2007 (214) ELT 187. He also relied upon the decision of the Tribunal in the case of Rathi Super Steel Ltd Vs CCE reported in 2004 (175) ELT 180.

3. The learned DR reiterates the findings of the Commissioner (Appeals). He submits that the appellants failed to give any reason for excess goods. He relied upon the decision of the Tribunal in the case of PNP Castings P Ltd Vs CCE Lucknow reported in 2006 (194) ELT 250.

4. After hearing both the sides and on perusal of the record, I find that on 27.12.03, the Central Excise officers during stock verification detected that the finished goods were lying unaccounted at the appellants factory premises. The appellants in their reply to show cause notice took a stand that Shri M.C. Chaursia was absent for the last four days and in the morning of 27.12.03, his fingers and thumb were crushed, therefore, he was feeling

acute pain. I find that goods were seized on 27.12.03 and the stand taken by the appellants in reply to show cause notice, after long time, without any corroborative evidence which cannot be accepted. The case law relied upon by the learned Advocate are not applicable herein on the ground that in the said cases, there was no material to show that the assessee had intention to evade payment of duty. In the present case, the Commissioner (Appeals) observed that regarding working of machines and production of the day, the submission of appellant is without support of any convincing evidence and cannot be accepted. Therefore, the lower authorities had taken into consideration the various factors while confiscating the goods. In any event, the Tribunal in the case of PNP Castings (supra) held that there is no requirement of intention to evade payment of duty for confiscation of non-accountal goods. The confiscation of goods is upheld. However, considering the facts and circumstances of the case, I reduced the redemption fine to Rs.15,000/- and penalty to Rs.15,000/-. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*