

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/2225 -2226/2006-SM[BR]

Date 12/05/2008

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

To :

M/S KURELE INDUSTRIES  
SHRI, RAJENDRA NATH JHA  
PANKI , INDUSTRIAL AREA, SITE-I, KANPUR[U.P]

M/S KURELE INDUSTRIES

Appellant

THE COMMISSIONER OF CENTRAL EXCISE KANPUR

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 735 -736 /2008 -SM[BR] dated 30.1.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

  
Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF CENTRAL EXCISE KANPUR

117, SARVODAYA NAGAR, KANPUR

2. Adv. / Consult SHRI K.K. ANAND ADV.

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 Publications (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 Nos.2225-2226 /2006-SM

(Arising out of order in appeal No.11/cE/App1/KNP/06 dated 19.1.06  
passed by the Commissioner of Central Excise (Appeals), Kanpur)

For approval and signature:

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

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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?

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1.M/s Kurele Industries  
2.Shri Rajendra Nath

Appellant  
(Rep. by Shri Hemant Bajaj, Advocate)

Vs

CCE, Kanpur

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

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

Date of Hearing: 30.1.2008

Final Order No. 735-736/08-Sm(CBR)

Per P.K. Das:

The appellant No.1 a registered dealer, has filed this appeal against confiscation and imposition of fine and penalty. The Appellant No.2 is Authorized Signatory of Appellant No.1 has filed this appeal against imposition of penalty. It has been alleged in the show cause notice that the appellants were engaged in issuing modvat invoices without delivering the material. The Central Excise officers visited their business premises on 12.1.2001. There were 274 bags of 30 different types of granules stored in the approved godown. The Central Excise officers found shortage of two items and excess of one item. Show cause notice proposed confiscation of excess seized goods valued at Rs. 2,71,000/- under Rule 173-Q of erstwhile Central Excise Rules, 1944 and imposition of penalty under the said Rules. The Adjudicating Authority dropped the proceedings. The Revenue filed appeal before the Commissioner (Appeals). The Commissioner (Appeals) by the impugned order, confiscated 5 MTs of granules under Rule 52-A of the said Rules with option to redeem the goods on payment of redemption fine of Rs. 1 lakh and penalty of Rs. 50,000/- on appellant No.1 and further penalty of Rs.20,000/- on appellant No.2.

2. The learned Advocate submits that show cause notice alleged non-accountal of goods and there is no allegation that the appellants wrongly availed the credit and therefore, confiscation and penalty are not sustainable.

He relied upon various decisions of the Tribunal. He further submits that authorized signatory is an employee of the appellant and he had no knowledge that the goods are confiscable and therefore, penalty is not sustainable.

3. The learned DR reiterates the findings of the Commissioner (Appeals). He submits that it is established from the seizure of excess goods that the appellants issued the invoices without removing the goods.

4. After hearing both sides and on perusal of record, it is seen from the show cause notice that on 12.1.2001, the Central Excise officers found excess goods in their godown without accounting in the statutory record in violation of sub-rule (3) of Rule 52-AA of the erstwhile Rules, which provides that the registered dealer shall maintain RG 23-D register. There is no allegation that the appellant issued modvatable invoices without delivering the material and therefore, the contention of learned DR is not sustainable. The Adjudicating Authority observed that there was a huge stock of 30 different types of plastic granules stored in the approved godown. He observed that due to shortage of storage space, it was not

stored properly and therefore proper verification was not possible. Storage of space further gets established from the fact that store room was got approved on 22.5.2001. The Commissioner (Appeals) observed that goods are liable for confiscation under rule 52-A of erstwhile Rules. I find that Rule 52-A of erstwhile Central Excise Rules provides that no excisable goods shall be delivered from a factory or warehouse except invoice issued by an owner of a factory. Therefore, Rule 52-A of the erstwhile Central Excise Rules is not applicable in this case.

5. I find that show cause notice did not indicate the violation of specific provision of Rule 173-Q. The learned DR points out that clause (b) of sub-rule (1) of Rule 173-Q of the said Rules is applicable as the registered dealer did not account for any excisable goods. I find that the Tribunal in a series of cases held that non-accountal of the goods lying in factory are not liable for confiscation under Rule 173-Q of the Central Excise Rules, 1944. In the case of Ganga Industries Vs CCE reported in 2007 (209) ELT 140, the Tribunal held that non-accountal of goods, lying within the factory, Rule 173-Q of erstwhile Central Excise Rules cannot be attracted. The same view is also expressed in the following cases:-

- 1) Sujana Universal Industries Ltd Vs CCE Hyderabad  
2007 (81) RLT 171

- 2) Laxminarayan Industries Vs CCE Surat  
2006 (205) ELT 320

I find that in the present case, the allegation is against registered dealer for non-accountal of goods. It is revealed from the Adjudication Order that due to shortage of storage space, the irregularity was occurred and therefore, confiscation is not justified. However, there is a contravention of rules and therefore, the penalty is justified.

7. Taking into consideration the facts and circumstances of the case, and in view of the above discussion, confiscation and imposition of fine are set aside and penalty is reduced to Rs.10,000/- on appellant No.1. Penalty on appellant No.2 is set aside and the appeal is allowed.

(Order dictated and pronounced in the open Court).

MPS\*

(P.K. Das)  
Member(Judicial)