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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/1345/2006-SM[BR] Date 19/05/2008

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

To :
M/S CHANDPUR ENTERPRISES LTD.

CHANDPUR, BIJNOR

M/S CHANDPUR ENTERPRISES LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 775 /2008 –SM[BR] 31.3.2008

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. MEERUT I

EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.

2. Adv. / Consult SHRI. BIPIN GARG ADV.
B-1/ 1289-A, VASANT KUNJ NEW DELHI-70

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.1345 /2006-SM

(Arising out of order in appeal No.59/Commr/Mrt.1/05 dated 30.12.05 passed by the Commissioner of Central Excise (Appeals), Meerut-I)

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

M/s Chandpur Enterprises Ltd	Appellant (Rep. by Shri Bipin Garg, Advocate)
Vs	
CCE, Meerut-I	Respondent (Rep. by Shri S. Gautam, DR)

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

Date of Hearing: 31.3.2008

Final Order No. 775 /2008-SM(BR)

Per P.K. Das:

The appellants filed this appeal against rejection of application for remission of duty.

2. It is seen from the impugned order that a fire was occurred in the appellants factory on 30.4.1999 and destroyed the excisable goods. The appellants informed the Fire Brigade and the Range Superintendent. The appellants filed application for remission of duty on the excisable goods lost/destroyed in fire under Rule 49 of the erstwhile Central Excise Rules, 1944.

3. The Commissioner of Central Excise rejected the Remission Application. The learned Advocate submits that the Commissioner wrongly rejected the application on the ground that fire occurred due to negligence and carelessness on the part of the appellants. He submits that there is no material produced by the Revenue in support of their contention He relied upon the decision of the Tribunal in the case of UP Sugar Corporation Vs CCE Meerut reported in 2004 (168) ELT 280 and Triveni Engg & Industries Ltd Vs CCE Meerut-I reported in 2003 (161) ELT 682.

4. The learned DR on behalf of the Revenue, reiterates the finding of the Commissioner. He submits that the report of the Fire Brigade is that the cause of fire has been shown as smoking with carelessness. He submits that it is not a case of natural cause or accident.

5. After hearing both the sides and on perusal of the record, I find that there is no dispute that the fire occurred at the appellants factory. The relevant portion of the finding of the Commissioner is reproduced below:-

"From the case records, it came to notice that the fire had broken out in the noticee's factory on 30.4.99 at about 17.00 Hrs and intimation to the Jurisdictional Range Superintendent was sent on next day i.e. on 1.5.99 at 12.00 Hrs. They also informed the local Fire Brigade as well as Local Police Station on the day of the incident i.e. on 30.4.99. Later on, the notice also filed information, in prescribed proforma, regarding remission of Central Excise duty, to the Jurisdictional Range Superintendent on 3.5.99. In this proforma, the notice mentioned precautions taken by them to safeguard the goods by trying to extinguish the fire by use of water, sand and fire extinguishers. In this Remission Application, the notice cited cause of accident as short circuit of electricity probably. Thus, I observe that the notices were not sure for the actual cause of fire and they also failed to adduce any evidence to suggest the same as a major cause for this incident."

6. It is seen from the impugned order that the Fire Bridgade in their report stated that the fire had occurred for smoking with carelessness. The appellants were not sure for the cause of fire. There is no material produced by the Revenue that there was a malafide on the part of the appellants. The Commissioner observed the loss of goods due to carelessness on the part of the appellants. The Tribunal in the case of UP Sugar Corporation (Supra) held that denial of Remission Application on the ground that short circuit occurred due to temporary electricity fitting, which is carelessness on the part of the appellants, is not justified. In the case of Triveni Engg (Supra), it has been held that as to whether reasonable steps had been taken to avoid fire accident in the contest of examining a Remission Application under Rule 49 of the Central Excise Rules, 1944. Once the incident reported to the authorities is accepted as an accident, considerations as to whether reasonable care was taken to avoid it are totally irrelevant.

7. In the present case, the finding of the Commissioner that the fire had occurred due to carelessness of the appellants is not justified. It is noted that an accident cannot be attributed to anybody's carelessness. Therefore, the impugned order is set aside. The appeal is allowed with consequential relief.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*