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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

Date 05/02/2009

Appeal No. E/330 /2007 – SM[BR]

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

To :
C.C.E.KANPUR
117/7, SARVODAYA NAGAR, KANPUR.

Appellant

Vs

C.C.E.KANPUR

Respondent

SH SANJAY GUPTA

I am-directed to transmit herewith a certified copy of **Final order** No. 98 / 2009- **SM[BR]** dated 27.1.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
SH SANJAY GUPTA
AUTHORISED SIGNATORY OF M/S STAR SOAP P LTD, 406/377-A, GUJJUPURWA, JAJMAU, KANPUR.
2. Adv. / Consult
NONE;-----------------

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 - 3
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). Thyagarava Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 330 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 562-CE/APPL/KNP/ 2006 dated 15/11/2006 passed by The Commissioner (Appeals), Customs & Central Excise, Kanpur.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 would 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 Department Authorities?	:

CCE, Kanpur — Appellant

Versus

Shri Sanjay Gupta — Respondent

Appearance

Shri M.M. Singh, Authorized Representative (DR) – for the appellant.

None – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 27/01/2009.

Final Order No. 98/09-SM(BR) Dated : 27-1-09

Per. Rakesh Kumar :-

This is Revenue's appeal against the impugned order-in-appeal dated 15/11/06 passed by CCE (Appeals) by which the Commissioner (Appeal) while upholding the order-in-original dated 20/06/06 passed by Assistant Commissioner with regard to confirmation of Cenvat credit demand of Rs. 1,07,020/- in respect of cenvated input found short and imposition of penalty of equal amount on M/s Star Soap (P) Ltd., set aside penalty of Rs. 10,000/- imposed on the Respondent who is authorized signatory of M/s Star Soap (P) Ltd.

2. None present on behalf of the Respondent. Heard the learned Departmental Representative. The learned Departmental Representative pleaded that the Commissioner (Appeal) has set aside the penalty on the Respondent on the ground that the Cenvat credit demanded had been paid prior to the issue of show cause notice and in such circumstances, in view of the Tribunal's judgment in the case of **CCE, Delhi**

– **III, Gurgaon vs. Machino Montell (I) Ltd.** reported in **2004 (168) E.L.T. – 466 (T.L.B.)** and also the judgment of the Tribunal in the case of **Rashtriya Ispat Nigam Ltd. vs. CCE** reported in **2003 (161) E.L.T. 285 (T.)**, which has been upheld by the Hon'ble Supreme Court, no penalty is imposable on the Respondent, that the ground on which the Commissioner (Appeal) has set aside the order of penalty on the Respondent is not relevant, that the Respondent at the time of the officer's visit to the unit when the shortage of the Cenvated input had been detected had clearly admitted that the same has been removed without payment of duty and that in view of such an active role of the Respondent, penalty had been rightly imposed by the Assistant Commissioner under Rule 26 of the Central Excise Rules.

3. I have carefully considered the submissions of the learned Departmental Representative and perused the records. While I agree that Tribunal's judgment in the case of Machino Montell (I) Ltd. (supra) is no longer a good law as the same has been reversed by Hon'ble Punjab & Haryana High Court in the case of **CCE, Delhi – III vs. Machino Montell (I) Ltd.** reported in **2006 (4) S.T.R. 117 (P & H),**

however for imposition of penalty on the Respondent, who is only an employee of M/s Star Soap (P) Ltd., there must be some positive evidence indicating his involvement in clandestine removal. From the statement of the Respondent referred to in the Assistant Commissioner's order, it is seen that what he has stated before the officers is that the cenvated input found short at the time of physical verification may have been cleared by any staff in his absence or in absence of Director of the Company without issue of any valid invoices. On the basis of this statement of the Respondent, it cannot be said that he had knowledge about clandestine removal of the Cenvated input. Therefore, I am of the view that the impugned order setting aside penalty on the Respondent does not suffer any infirmity. The Revenue's appeal, therefore, is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK