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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 12/02/2009

Appeal No. E/37 /2007 – SM[BR]

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

To :
M/S PRAYAG POLYTECH PVT. LTD.
C - 587, INDUSTRIAL AREA, PHASE - I, BHIWADI
(RAJASTHAN)
M/S PRAYAG POLYTECH PVT. LTD.

Appellant
Vs
Respondent

C.C.E. JAIPUR-I

I am directed to transmit herewith a certified copy of **Final order No.** 161 / 2009 - **SM[BR]** dated 6.2.2009

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. JAIPUR-I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR
   302005
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI

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), Thyagaraya 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)

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

E/Appeal No.37/2007 -SM(Br)

(Arising out of order in appeal No.226/GRM/CE/JPR.I/06 dated 20.9.2006 passed by the Commissioner of Central Excise (Appeals), Jaipur)

M/s Prayag Polytech Pvt Ltd — Appellant

Vs

CCE, Jaipur — Respondent

Appeared for Appellant: Shri Biping Garg, Advocate
Appeared for Respondent: Shri R.K. Verma, DR

Date of Hearing: 23.1.09

Coram: Hon'ble Mr.D.N. Panda, Judicial Member

Final Order No. 161 /2009-SM(BR)

Per D.N. Panda:

At the outset, when the matter was called, none was present for the appellant. Shri R.K. Verma, learned DR on behalf of Revenue submits that concurrent finding of both the authorities below established that there was finished goods found in the premises of the Appellant in the course of investigation on 10.1.2001. He submits that not only goods were found, but there was also categorical admission of Shri Ishwar Yadav, Excise Clerk as per evidence recorded on 10.1.2001 under Section 14 of Central Excise Act, 1944. It was established by the statement itself that the Excise Clerk and Shri Kishore Thawani, Deputy

Manager of the assessee was present during stock verification and did not controvert the inventory. They were satisfied about the manner of stock verification. Shri R.K. Anand, Director by letter dated 15.1.2001 controverted the statement as well as the physically verified quantity. He stated that the goods 18.625 MT was lying in a separate godown. In view of proper opportunity granted to explain the deficiency and the appellant having failed to explain, there is no necessity to interfere with the order passed by the authorities below. The learned DR further submits that there was in the Panchnama it was categorically recorded that everything was physically verified by the investigating team and nothing else was available. Therefore, book figure having differed with the physically verified figure, the authorities booked the case against the Appellant.

2. While completing hearing, Shri Bipin Garg, learned Counsel for the appellant entered appearance and submited that the book figure considered for comparison with the physically found figure itself was excess which is required to be reduced by a quantity of 18.628 MT because that was lying in a different godown. He relied on the correspondence with the Department made on 15.1.2001 for such submission and submits that if the contents of that letter are considered, the appellant shall get relief. Therefore, findings of both the authorities below are erroneous.

3.1 Heard both sides and perused the record.

3.2 The allegation came out against the appellant from the outcome of the investigating made on 10.1.2001. The

Investigating team found shortage of Colour Master Batches, Colour Master Batch Black and Filled PP. When the physically found figure was compared with the recorded figure in RG.I register, the Department arrived at shortage. There was a clear cut panchnama made out by the Department. That panchnama was in the presence of witnesses and that remains uncontrovered with the physically found figures. Department has also recorded the statement of Shri Ishwar Yadav, Excise Clerk who admitted the shortage. Shri Kishore Thawani, Deputy Manager did not controvert his presence during stock taking. Soon after the investigation on 10.1.2001, the appellant filed an application before the Superintendent requesting for a visit to make fresh inventory of the goods. Learned Counsel relies upon his letter dated 15.1.2001 for his submission. A copy of this letter is available on record at page 25. This letter shows only rubber stamp and no signatures by the authorities acknowledging the letter. But perusal of the order of adjudication clearly establishes that the contention of the appellant as made in letter dated 15.1.2001 was considered by the learned authority. Upon consideration, the appellant was rightly dealt with under the law. In view of the fair opportunity granted, there does not appear to be any violation of natural justice. The order does not indicate whether the appellant made reconciliation of deficiency of stock. It was required before the adjudicating authority to prove that opening balance in the record should get reduced by a quantity of 18.628 MT lying in a separate godown and that is under seizure by the authorities. Both the authorities below found no discrepancy in the physical inventory that was found in the course of investigation. The only doubt that leaves for consideration is whether the appellant shall get credit for 18.625 MT if its averment dated 15.1.2001 is correct. Therefore, to meet the ends of justice, this matter has to go back to the learned Adjudicating authority to re-examine whether the opening balance of the respective goods on 10.1.2001 appearing in RG.I register shall stand reduced by 18.628 MT. The appellant deserves consideration appropriately. It would be necessary to test whether averment of the appellant as to seizure of goods of 18.625 MT was out of the stock of RG I Register and whether the goods seized existing in a different location are the same goods and that belongs to the appellant to deal against the opening balance. If the authorities below are satisfied with evidence, the appellant may get relief.

4. Therefore, in view of the aforesaid observations, the matter is remitted back to the learned adjudicating authority to grant an opportunity of hearing to the appellants to enable him to reconcile the quantity of goods to decide the matter in accordance with law.

5. In the result, the matter is remanded setting aside the impugned order.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*