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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/964 /2007-965 /2007 – SM[BR] Date 16/02/2009

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

To :
C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S RAGHUNATH INTERNATIONAL LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 177-178 / 2009 – SM[BR]** dated 10.2.2009

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

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
1. M/S RAGHUNATH INTERNATIONAL LTD.
2. SHRI RAJESH AGARWAL, MANAGER/AUTHORIZED SIGNATORY
84/12, FACTORY AREA, FAZALGANJ, KANPUR

2. Adv. / Consult SHRI RAJESH JAIN ADV.
"ABHINANDAN FARM "BEHIND CHIRANJIV BHARTI SCHOOL
PALAM VIHAR, GURGAN- 122017 [H.R]

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.I

Excise Appeal Nos. 964 - 965 of 2007-SM

[Arising out of order-in-appeal No. 05-06-Central Excise/APPL./KMP/2007 dated 24.01.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur]

Date of Hearing/Decision : 10.02.2009

For approval and signature:

Hon'ble Mr. M. Veeraiyan, 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.	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Kanpur — Appellant
[Rep. by Mr. Sansar Chand, DR]

Versus

M/s Raghunath International Limited & Ors. — Respondent
[Rep. by Mr. Rajesh Jain, Advocate]

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 177-178/09-SM(BR)

Per M. Veeraiyan

These two appeals by the Department arise out of order of Commissioner (Appeals) No. 05-06-Central Excise/APPL./KMP/2007 dated 26.12.2006 by which the penalty imposed on the two appellants by the original authority was set aside.

2. Heard both sides.

3. Relevant facts in brief are as follows:-

a) On 08.02.2005, when the Officers visited the factory and took stock taking found shortage of goods (Pan masala, Gutka) involving duty of Rs. 6,02,098/-. The authorized representative Shri Rajesh Aggarwal admitted the shortage of the finished goods but could not give any reason for the shortage and pleaded ignorance on the reasons for such shortage.

b) However, accepting the shortage they debited the Central Excise duty on the same day i.e. 08.02.2005.

c) Show cause notice was issued proposing confirmation of duty involved and proposing penalty on the two appellants and original authority apart from confirming the demand of the duty and interest, imposed equal amount of penalty on the company and Rs. 1 lakh on the authorized signatory.

d) Commissioner (Appeals) taking note of the fact that the shortage was found on verification of the goods and duty on the shortage have been paid voluntarily before issue of show cause notice, set aside the penalties on both the appellants.

4. Learned DR submits that the shortage found is very huge, the reason for shortage was not explained by the authorized signatory, it should be presumed to have been clandestinely removed and the provisions of Section 11AC is applicable and, therefore, orders of the Commissioner (Appeals) in so far as vacating the penalties should be set aside.

5. Learned Advocate for the respondent supported the order of the Commissioner (Appeals). He also submitted that the imposition of composite penalty by the original authority under section 11AC read with Rule 25 is not permissible and in this regard he relies on the Gujarat High Court decision in CCE vs. R.G. Agarwal- 2009 (234) ELT 215 (Guj.). He also submits that mere shortage of finished goods can not be equated with clandestine removal, in the absence of other evidence and in such a situation imposition of penalty is not warranted. He relies upon the decision of the Punjab & Haryana High Court in the case of CCE Vs. Sigma Steel Tubes -2007 (218) ELT 657 (P&H). He also submits that the powers of adjudication of the Joint Commissioner is to be governed by provision of Section 33 of the Central Excise Act and there is no specific notification giving powers to adjudicate cases like the present one. In view of the above, the imposition of penalties was beyond the powers prescribed under section 33 for the Joint Commissioner.

6. I have carefully considered the submissions from both sides. It is a clear case of admitted shortage of finished excisable goods on the day of visit by the Officers and the duty involved stands paid and the same is not in dispute. However, the charge of clandestine removal is a severe one and requires to be proved by evidence such as transport document, recovery of excess stock or payment for the unaccounted clearances and statements of the concerned persons admitting clandestine removal. In this particular case, the admission is only relating to shortage of the finished goods. No other evidence which can substantiate the finding by the original authority that the goods were cleared clandestinely has been relied upon. Under these circumstances, the decision of the Commissioner (Appeals) in setting aside the penalty imposed under Section 11AC

is in order. Further, the original authority has imposed penalty on the authorized signatory holding that he was not only having knowledge /full control over the day to day affairs of the party and that he was aware of all the activities being carried out in the factory of clandestine removal of the goods found short, as well as he was actively involved in such fraudulent removals. This inference is not supported by any evidence. The only admission is the admission of shortage by Shri Rajesh Agrawal. Therefore, there was no justification for imposition of penalty on Shri Rajesh Agrawal also.

7. In view of above, there is no valid grounds made out for interfering with the order of the Commissioner (Appeals). I am not going into other issues raised by the learned Advocate in this case. Appeals are rejected.

[Dictated and pronounced in the open Court]

[M. Veeraiyan]
Member (Technical)

[Pant]