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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/1023/2007 – SM[BR] C.O./ 122/2007 –SM[BR] Date 17/02/2009

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant

Vs

M/S MOHD. ANIS & SONS BIRI WORKS, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 180 /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
   M/S MOHD. ANIS & SONS BIRI WORKS,
   92, DONDIPUR, ALLAHABAD (U.P.)
2. Adv. / Consult
   SHRI S.P. OJHA CON.
   299 BAGHAMBARI HOUSING SCHEME ALLAHPUR, ALLAHABAD

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,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 10.2.2009

Central Excise Appeal No.1023 of 2007 with Cross-Objection No.122 of 2007

Arising out of the order in appeal No.11-CE/ALLD/2006 dated 23.1.2007 passed by the Commissioner (Appeals), Central Excise, Allahabad.

For Approval and Signature:

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

1	Whether Press Reporter 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 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

Appellant | Respondent

C.C.E., Allahabad vs. M/s Mohd. Anis & Sons Biri Works

Appearance:

Shri Sansar Chand, Authorized Departmental Representative (DR) for the Revenue and Shri S.P. Ojha, Consultant for the respondent

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

Final Order No. 180/09-SM (BR)

Per M. Veeraiyan:

Heard both sides on the appeal filed by the Department.

2. The original authority confirmed the demand of Rs.29,997/- along with interest and imposed penalty of Rs.29,997/- on the respondent holding that they have cleared biris clandestinely. The

demand relates to the period 2001-02 and 2002-03. The demand was raised based on alleged use of the raw materials in excess of in-put-out ratio. Commissioner (Appeals) has allowed the appeal of the party with the following observations:

> ***" 7. In this connection, it is observed that the charge of clandestine removal is a serious charge and it must be proved with substantive evidence. Merely because, an assessee changes ratio of tobacco in the biris he cannot be said to have been indulged in clandestine removal of biris. Some other substantive evidence showing excess manufacture of biris, and removal of the same has to be adduced to establish the charge of clandestine removal......."***

3. The use of raw materials cannot be with mathematical precision. The alleged excess quantity used is not of significant level as seen by the extent of demand confirmed by the original authority for two years. To claim that some quantity of raw materials has been used in excess over a period two years and to demand of Rs.29,997/- was not at all justified in the absence of any other evidence indicating unaccounted production and clandestine removal. Commissioner (Appeals) is entirely right in coming to the conclusion in favour of the assessee. Appeal filed by the Department is devoid of any merit whatsoever.

4. Appeal is dismissed.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

scd/