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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/2597 /2005 AND E / 1596 / 2004 –SM[BR] Date 24/02/2009

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

To :
(12) M/S G.K.WINDING WIRES LTD
B-20,UPSIDC,INDUSTRIAL AREA,SITE-C,SURAJPUR,DISTT.GAUTAM BUDH NAGAR.

M/S G.K.WINDING WIRES LTD Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 191-192 / 2009 - SM[BR]** dated 29.1.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. NOIDA
   B-123, SECTOR 5, NOIDA.
2. Adv. / Consult
   MR.V.K GUPTA
   F-56, DWARKA PURI NAVEEN, SHAHDARA, DELHI-110032
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.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Appeal No.E/2597/05-SM and
E/1596/2004-SM

[Arising out of Order-in-Appeal No.60-CE/APPL/NOIDA/05 dated 29.04.2005 passed by the Commissioner (Appeals) Central Excise, Noida & Order in Original No.01/2004 dated 02.01.2004 passed by the Commissioner, Central Excise, Noida].

Date of Hearing:29.01.2009
Date of decision:29.01.2009

For approval and signature:

Hon'ble MR. 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 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?	

M/s.G.K.Winding Wires Ltd. ...Appellant
[Represented by None]

Vs.

CCE, Noida ... Respondent
[Represented by Shri M.M.Singh, D.R.]

Coram: Hon'ble MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Final ORDER NO. 191-192/09-SM (BR) DATED:29.01.2009

PER:RAKESH KUMAR

Appeal No.E/2597/05-SM is against the Order-in-Appeal dated 29.04.05 passed by the Commissioner of Central Excise

(Appeals), Noida by which he upheld the duty demand of Rs.1,68,683/- against the appellant and Appeal No.E/1596/04-SM is against order in Original No.01/2004 dated 2.1.04 passed by the Commissioner of Central Excise, Noida.

2. The facts of the case are that on 12.01.03 a decoity took place in the appellant's premises and they lost certain quantity of finished goods as well as raw-material about which an FIR was lodged by them on 12.01.03. The appellant submitted an application to the Jurisdictional Central Excise Commissioner for remission of Central Excise Duty amounting to Rs.1,68,683/- on the goods stolen from the factory but the Commissioner vide order No.01/04 dated 02.01.04 dismissed the application for remission. In view of this, the Asstt. Commissioner vide order in original dated 22.11.04 confirmed the duty demand of Rs.1,68,683/- against the appellant alongwith the interest and their appeal against the Asstt. Commissioner's order was dismissed by the Commissioner (Appeals) vide the Order-in Appeal dated 29.04.05 impugned in appeal No.E/2597/05-SM. against the Commissioner Order No.1/04 dated 2.1.04 appeal No.E/1596-SM was filed.

3. None appeared for the appellant. The appellant, however, vide their letter dated 27.01.09 have stated that though due to

some unavoidable circumstances they are not able to present themselves at the time of hearing, their matter may be decided on merits on the basis of the submissions made in their appeal memo.

4. Shri M.M. Singh, ld. D.R. pleaded that Rule 21 of the Central Excise Rules provides for remission of duty in respect of the loss of excisable goods prior to their clearances due to any natural causes or unavoidable accidents, that as per the judgement of the Larger Bench of the Tribunal in the case of Gupta Metal Sheet reported in 2008 (232) ELT 796, the Provisions of Rule 21 are not applicable in the case of loss of goods due to theft, pilferage or decoity that in view of this, the Commissioner had rightly rejected the application for remission of duty and that therefore, the duty demand has been rightly confirmed and as such there is no infirmity in the Commissioner(Appeals) order.

5. I have carefully considered the submissions of the ld. DR and have perused the records. I find that the duty demand has been confirmed consequent upon rejection of

the remission application filed by the appellant. The Tribunal in a recent judgment in the case of Gupta Metal Sheet reported in 2008 (232) ELT 796 has held that the provisions of Rule 21 have no application in the case of loss of excisable goods due to theft, pilferage or dacoity. Therefore, the Commissioner's order rejecting the application for remission of duty as well as CCE (Appeals)'s Order upholding the duty demand are correct ~~as~~ and there is no infirmity in the impugned orders. The appeals are dismissed.

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita