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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/2084/2007 – SM [BR] Date 20/03/2009

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

To :
M/S KANORIA CHEMICALS & INDS. LTD.

SH. J.M. DUGGAR, C/O M/S CHEMICALS & INDS.
LTD. P.O. RENUKOOT, DISTT. SONEBHADRA, U.P.
M/S KANORIA CHEMICALS & INDS. LTD. Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 227 / 2009 –SM[BR] dated 17.3.2009

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 ALLAHABAD

38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult
MR.A.P.MATHUR

167,TAGORE TOWN, ALLAHABAD,UP

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.2084/2007 -SM(Br)

(Arising out of order in appeal No.79/CE/Alld/02 dated 16.4.2004 passed by the Commissioner of Central Excise (Appeals), Allahabad)

M/s Kanoria Chemicals & Industries Ltd — Appellant

Vs

CCE, Allahabad — Respondent

Appeared for Appellant : Shri A.P. Mathur, Advocate
Appeared for Respondent : Shri Sansar Chand, DR

Date of Hearing:13.3.09

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

Final Order No. 227 /2009 - SM(BR)

Per D.N. Panda:

Shri A.P.Mathur, learned Counsel submits that the goods which were subject matter of invoice and such invoice forming part of the record, without being properly examined as to the nature of the transaction, the appellant was erroneously held to have been unjustly enriched. He categorically submits that the appellant's factory is in Renukot and its head office is in Kolkata. Some of the goods were meant for export while some of the goods were sent to the head office for export. According to him, if Revenue ascertains the nature of transaction, the appellant shall be entitled to appropriate relief.

2. Learned DR agrees that if record shows that the goods were meant for export and have been exported, the appellant shall be appropriately dealt with under the law. If the authorities come to a conclusion that the goods were not exported, the appellant is required to meet the test of unjust enrichment.

3. Heard both the sides and perused the record.

4. Rival submissions of both the sides require thorough examination of the purpose of transaction meant by respective invoices. If the adjudicating authority comes to a conclusion that the Renukot factory of appellant has really sent the goods to Kolkata for export, there may not be a case to hold against the appellant that it was unjustly enriched. This calls for remanding the matter to the learned Adjudicating Authority to enquire from Revenue Authorities of Kolkata and make proper examination of the case to come to a proper conclusion as to the nature of the transaction. The appellant needs to be granted opportunity of hearing before deciding the matter afresh.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*