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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 17/06/2009

Appeal No. E/1783/2006 – SM[BR]

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA

Appellant
Vs
Respondent

M/S RUBY DYEING & FINISHING MILLS

I am directed to transmit herewith a certified copy of **Final order No 579 / 2009 -SM[BR]**. dated 4.6.2009 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 RUBY DYEING & FINISHING MILLS
   D-277-A,FOCAL POINT PHASE-VIII LUDHIANA
2. Adv. / Consult SHRI RUPINDER SINGH ADV.
   N/V;-------------------------------

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 1783 OF 2006-SM

[Arising out of Order-in-Appeal No. 136/CE/Chd/06 dated 24.02.2006 passed by the Commissioner (Appeals), Central Excise, Ludhiana]

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

CCE, Ludhiana Appellant

Vs.

M/s. Ruby Dyeing & Finishing Mills, Respondent

Appearance:

Shri R.K. Verma, D.R. for the Revenue;
Shri Rupinder Singh, Advocate for the respondents

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial),

Date of hearing/decision: 4th June, 2009

FINAL ORDER NO. 579/09-SM(BR) dated 4.6.09

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents are engaged in dyeing of Acrylic Yarn classifiable under Chapter 55 of the Schedule to the Central Excise Tariff Act, 1985. On 18.3.2004 the Central Excise officers visited the respondents' factory premises and found one parallel challan book. It was also found that challans were issued for clearance of the goods without payment of duty involving Rs. 79,654/-. The officers also noticed a quantity of 3550 kgs. of Grey Acrylic Yarn in excess. The respondents upon detection of the clearance of goods on the parallel challans immediately deposited the duty of Rs. 79,654/- along with penalty of 25% of duty. The original authority confirmed the demand of duty and appropriated the amount as already deposited and also imposed penalty of equal amount under Section 11AC of the Central Excise Act, 1944, read with Rule 25 of Central Excise Rules, 2002 on the goods removed clandestinely. ~~and confiscated goods~~ He also confiscated excess quantity of raw material and imposed redemption fine of Rs. 25,000/-. The Commissioner (Appeals) set aside the penalty, interest and confiscation of the goods. Hence, Revenue filed this appeal for imposition of the penalty, interest and confiscation of the goods.

2. After hearing both sides and on perusal of the records, I find that the goods were cleared on the basis of parallel challans without payment

of duty. Thus, it is a case of clandestine removal of goods. Section 11AC of the Central Excise Act, 1944 provides penalty for short levy or non-levy of duty by reasons of fraud, collusion or any willful mis-statement or suppression of fact with intent to evade payment of duty and penalty is liable to equal to the duty so determined. Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. vs. UOI vs. Anrs. – 2008 (85) RLT 483 (Del.) held that in terms of 1st proviso to Section 11AC where entire duty is paid before issuance of show cause notice, the adjudicating authority should specifically give an option to the party to pay 25% of the duty as penalty within 30 days. In the present case, it is clearly evident that the goods are cleared clandestinely and, therefore, penalty under Section 11AC of the Act is warranted. It is noted that the respondents have already deposited the duty along with penalty 25% of duty amount as penalty. In view of the decision of the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. (supra) penalty of 25% of duty is warranted.

3. Regarding confiscation of the raw material the learned Advocate submits that they have not availed any benefit on the seized raw material. The Tribunal in the case of CCE, Delhi vs. Oceanic Cooling Towers (P) Ltd., reported in 2003 (161) ELT 631 (Tri.-Del.) and in the case of Anchal Prints Pvt. Ltd. vs. CCE, Surat-I, reported in 2009 (235) ELT 117 (Tri. – Ahmd.) held that raw material confiscated under Rule 25 of Central Excise Rules, 2002 is liable to be set aside.

4. On the other hand, the learned D.R. submits that Rule 25 of Rules would apply to any excisable goods. He also relied upon the decisions as recorded in the grounds of appeal. For proper appreciation the relevant portion of the decision of the Tribunal in the case of Anchal Prints Pvt. Ltd. (supra) is reproduced below:-

"It is further seen that the lower authorities have confiscated under-processed goods with an option to the appellant to redeem the same on payment of redemption fine of Rs. 6 lakhs. the appellants have contested that there is no provision for confiscation of raw materials or semi-finished goods and Rule 173Q/Rule 25 provides for confiscation of finished goods only. For the above proposition, reliance has been placed on the decision of the Tribunal in the case of Birla Yamaha Works vs. CCE, Meerut reported in 2005 (183) ELT 194 (Tri.-Del.). We agree with the learned Advocate that Rule 25, under which the semi –finished processed goods has been confiscated is applicable only to finished excisable goods. As such, we set aside the confiscation and consequent redemption fine in respect of the said goods."

Hence, Commissioner (Appeals) rightly set aside confiscation of goods.

5. Accordingly, order of the Commissioner (Appeals) is modified ~~and original order is restored~~ insofar as penalty of 25% of duty along with interest are upheld. The appeal filed by the Revenue is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK