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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/2327/2007-2328/2007 – SM[BR] Date 02/07/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. SH. PREM KUMAR SACHAN
2. M/S NAVEEN TEXTILE AGENCIES
H-9 & 10, PANKI INDL. ESTATE, SITE-I, KANPUR-208005.

SH. PREM KUMAR SACHAN Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 636 – 637 / 2009 –SM[BR] dated 9.6.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
MR.R. SANTHANAM
C-3/210, JANAK PURI, NEW DELHI - 110 058.

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)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.2327 and 2328 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.193 & 194 /CE/APPL/KNP/2007 dated 30.05.2007 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:9.6.2009

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? : Yes.

(1) M/s. Naveen Textile Agencies ...Appellants
(2) Shri Prem Kumar Sachan [Rep. by Shri R. Santhanam, Advocate]

Vs.

CCE, Kanpur ...Respondent
[Rep. by Shri V.K. Saxena, Jt. CDR]

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

Final Order No. 636-637/2009 SM (BR)/Dated:09.06.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Tent Extendable classified under Chapter 63 of the Schedule to the to CETA, 1985. On 20.02.2006, the central excise officers visited the appellants' factory and conducted stock verification. The said officers detected shortage of raw materials viz. Aluminium Pipes to the quantity of 11785 pieces. Shri Prem Kumar Sachan, Authorised Signatory, Appellant No.2 failed to explain the reasons for shortage. But he reversed the duty of Rs.2,00,024.00 on 23.02.2006. The appellant paid the duty under protest as evident from the copy of the TR-6 challan produced by the ld. Advocate. The Original Authority confirmed the demand of duty of Rs.2,00,024.00 and appropriated the amount as deposited by them. He also imposed penalty of equal amount each on the Appellant no.1 and the Appellant no.2, the Authorised Signatory. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Advocate on behalf of the appellants submits that the entire finished goods was made to the Defence and Para-Militry Force as per contract. The shortage of Aluminium Pipes were used in the manufacture of Defence goods. The appellants paid the duty under protest and furnished the explanation in their reply to the show cause notice, which was not considered by both the Authorities below. The submission of the appellants was discarded on the ground that the reason was not furnished at the time of detection of the shortage.

3. Ld. Jt. CDR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the shortage was detected on 20.02.2006 and the Appellant no.2 accepted the shortage and paid the

duty. He also submit that no explanation was furnished before issue of show cause notice. Therefore, the submission of the appellant was rightly rejected by the Lower Authorities. He also submits that the Original Authority considered their submission but it was not accepted as they have not maintained the accounts properly.

4. After hearing both the sides and on perusal of the records, I find that the appellants paid the duty under protest. The appellant explained the reasons for shortage in reply to the show cause notice. It is noted that the entire supply was made to the defence and Para Military Forces and the shortage of the items Aluminium Pipes in particular sizes were used in the manufacture of Tent Extendable. The stand of the appellant is that the shortage quantity was already used in the finished goods. In this connection, they have given the detailed chart in reply to the show cause notice, which was also recorded in the Adjudication Order.

5. I find that the Original Authority did not consider on the ground that the records were not maintained properly. The Commissioner (Appeals) observed that they have failed to furnish the reasons at the time of detection of the shortage. The contention of the appellant is that the purchase of input, consumption and the balance quantity found in physical verification as under:-

Receipt	115188
Sent to job work	33801
Received back	12623

Total	94010
Qty. Consumed	89114
Balance as per record	4896
Balance verified	4793
Difference	103

6. It appears that the shortage of input may be accountal mistake, which is required to be verified with corroborative evidences.

7. In my view, to meet the ends of justice, the explanation furnished by the appellants is required to be considered by the Lower Authorities. Accordingly, the impugned orders are set aside. The matter is remanded back to the Original Authority to decide afresh after considering the submissions of appellants in respect of the reasons for shortage. Needless to say that the Original Authority shall give opportunity of hearing before decision. Both the appeals filed by the appellants are allowed by way of remand.

Order dictated & pronounced in open court on 9.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.