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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/1358/2007 – SM[BR] Date 15/07/2009

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

To :
M/S RATHI SYNTEX LTD.

JHALAWAR ROAD, BHHAWANIMANDI
(RAJASTHAN)

M/S RATHI SYNTEX LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 697 / 2009 –SM[BR] dated 8.7.2009

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. JAIPUR I

   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

   MR.K.K ANAND

   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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. 1358 OF 2007-SM

[Arising out of Order-in-Appeal No. 44(GRM)ST/JPR-I/2006 dated 20.2.2007 passed by the Commissioner (Appeals-I), Customs & Central Excise, Jaipur]

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?	No
2.	Whether it would 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

M/s. Rathi Syntex Ltd., Appellants

Vs.

CCE, Jaipur Respondent

Appearance:

Shri Hemant Bajaj, Advocate for the appellants;
Shri S. Gautam, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 8th July, 2009

FINAL ORDER NO. 697/2009 SM(Br) **dated** ________

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Polyster Textured Yarn classifiable under Chapter 54 of the Schedule to the Central Excise Tariff Act, 1985. During the course of audit it was noticed the appellants transferred their inputs, semi-finished goods and finished goods from unit No. 1 to their unit No. 2 without observing proper procedure as provided under the Central Excise Rules during the period 22.10.2003 to 25.10.2005. Show cause notice dated 6.2.2006 was issued proposing demand of duty of Rs. 1,07,057/- and penalty. Original authority confirmed the demand of duty of Rs. 1,07,057/- and imposed penalty of equal amount under Section 11AC of the Central Excise Act, 1944 and penalty of Rs. 10,000/- under Rule 26 of Central Excise Rules, 2002 along with interest. Commissioner (Appeals) upheld the adjudication order.

2. Learned Advocate submits that the appellants requested for adjournment which was not accepted and the adjudication order was passed without giving proper opportunity of personal hearing to the appellants. They could not file reply to the show cause notice. He submits that in the appeal before the Commissioner (Appeals) they categorically stated that by their letter dated 20.10.2003 they informed the Asst. Commissioner of Central Excise that their unit No. 1 was closed

down and shifted to unit No. 2. They have also stated that the entire stock of inputs as well as finished goods of unit No. 1 were shifted to unit No. 2 under Rule 8 of Cenvat Credit Rules, 2002 accompanied by central excise invoices. He submits that they contested the demand of duty and penalty on merit as well (as) on limitation. It is his contention that the Commissioner (Appeals) passed the order without considering their submissions and no finding was given.

3. Learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that admittedly the appellants removed the inputs, semi-finished goods and finished goods without payment of duty to their other unit which would be treated as clandestine removal of the goods and, therefore, extended period of limitation would apply. He further submits that proper opportunity of hearing was given to the appellants to defend their case before the original authority but they have not utilized the same. He also submits that the Commissioner (Appeals), after examining the evidences, passed the order.

4. After hearing both sides and on perusal of the records, I find that the appellants in their memo of appeal stated as under:-

"1. The appellant is a company within the meaning of the Companies Act. At the relevant time the appellant had two units at Bhawanimandi, known as Unit I and Unit II. In Unit I the appellant was manufacturing polyester textured yarn. Unit I was being run from rented premises whereas Unit II was being run from the premises owned by the company. The appellant had obtained Central Excise Registration, separately, for both the aforesaid Units.

2. Certain problems arose in the running of Unit I as it was being run from rented premises. The appellant, therefore, decided to switch over its entire activities being run in Unit I to Unit II, which was being run from the companies own premises.

3. In furtherance of the aforesaid, the appellant addressed a letter dated 20.10.2003 to the Assistant Commissioner, Central Excise, Kota surrendering the Central Excise Registration in respect of Unit I. IN the said letter it was stated that it had been decided to switch over the activities of Unit I to Unit II since Unit I was being run out of rented premises, which caused certain problems. It was stated in the said letter that the entire inputs and as well as finished products in Unit I were being shifted to Unit II in the same condition, as per Rule 8 of the Cenvat Credit Rules. The appellant enclosed a statement showing the stock of finished goods and inputs as also the balance in the PLA and RG 23A-II Registers. Copies of this letter were marked to the Superintendent, Central Excise, Range IV, Kota and the Inspector, Central Excise, Bhawanimandi. A true copy of the said letter dated 20.10.2003 is annexed hereto and marked Annexure 'A'.

4. Accordingly, having informed the Central Excise authorities as aforesaid, the appellant transferred/shifted the balance stock of inputs and finished goods from Unit I to Unit II. The entire stock was shifted under

six invoices, bearing No. 037, 038, 039 and 040 all dated 22.10.03 and 041 dated 24.10.2003 and 042 dated 25.10.2003.

5. Therefore, the fact that the appellant had surrendered its Central Excise Registration in respect of Unit I was within the knowledge of the Central Excise Department. The fact that the appellant was going to shift the entire inputs as also the finished products from Unit I to Unit II was also within the knowledge of the Central Excise Department vide letter dated 20.10.2003 referred to hereinabove. Therefore, at all relevant times all relevant facts were within the knowledge of the Central Excise Department."

5. On perusal of the order of the Commissioner (Appeals), it is seen that the Commissioner (Appeals) observed that the appellants clandestinely cleared dutiable goods without payment of central excise duty amounting to Rs. 1,07,057/- in contravention of provisions of Central Excise Rules, 2002. It is seen that the appellants took s~~teps~~ tand before the Commissioner (Appeals) that the goods were cleared accompanied with central excise invoices. It appears that the Commissioner (Appeals) had not considered the submission of the appellants in proper manner. To meet the end of justice, in my view, the evidences placed by the appellants are required to be examined.

6. In view of the above discussion, impugned order is set aside and the matter is remanded to the original authority to decide afresh after considering the submissions of the appellants. Needless to say that the

original authority shall given proper opportunity of hearing to the appellants before passing order and the appellant shall cooperate during adjudication proceedings. All points are left open. Appeal is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK