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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/99 - 100 / 2007 -SM[BR] Date 17/08/2009

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

To :
M/S SANKET FOOD PRODUCTS PVT LTD
17, F.I.E. INDUSTRIAL AREA, PATPARGANJ, DELHI
110092

M/S SANKET FOOD PRODUCTS PVT LTD Appellant

Vs

C.C.E.DELHI II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 922 - 923 / 2009 -SM[BR] dated 31.7.2009 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.DELHI II
   C.R.BUILDING, I.P.ESTATE, N.DELHI
2. Adv. / Consult
   MR.KAMALJEET SINGH
   J-144, PATEL NAGAR -I,GHAZIABAD.
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
18. SH ASHOK KHANNA
    PROP M/S KHANNA TRADERS, 28/19, KASTURBA NAGAR,
    SHAHDARA, DELHI.

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 31.7.2009

Central Excise Appeals No.99- 100 of 2007-SM

Arising out of the order in appeal No.69-70/CE/DLH/2006 dated 12.10.06 passed by the Commissioner (Appeals), Central Excise, Delhi II.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical) M Veeraiyan

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Sanket Food Products Pvt. Ltd. .... Appellants
Shri Ashok Khanna
(Prop. M/s Khanna Traders)

Vs.

C.C.E., Delhi II .... Respondent

Appearance:

Shri Kamaljeet Singh Advocate for the appellants
Shri S.N. Srivastava, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Oral Order No. 922 - 923/2009 SM (Br)

Per M. Veeraiyan:

These two appeals are against the order of the Commissioner (Appeals) No. 69-70/CE/DLH/2006 dated 12.10.06.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

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a) M/s Sanket Food Products is a franchise holder of Goa 1000 brand gutkha and have their unit at Patparganj. Apparently, M/s Khanna Traders were stockists of the said Sanket Food Products, Patparganj. On 9.3.2002, the officers visited the premises of M/s Khanna Traders and the proprietor of Khanna Traders was not available. With the help of the owner of the premises of Khanna Traders, the premises were opened and Gutkha valued at Rs.3,90,456/-- (MRP) was detained. The panchanama dated 9.3.2002 indicated the pouches were showing that the goods were manufactured by Sanket Food Products Pvt. Ltd.,ROA-9/26, Addl. MIDC, Jalna - 431203. It appears that the officers have not recorded any statement of the concerned persons of M/s Khanna Traders as well as M/s Sanket Food Products. M/s Khanna Traders have sent letters enclosing the sale invoices of Jalna unit in the name of M/s Sanket Food Products issued to M/s Khanna Traders. The show cause notice has been issued relying on the detention panchanama, the statement of the land lord and the report given by a team of officers. The original authority confiscated the goods valued at Rs.4,36,392/- (the value of the goods was Rs.3,90456/-as the panchnama) and allowing redemption on payment of fine of Rs.50,000/-. Duty of Rs.1,30,918/- stands demanded from the appellant company along with interest and penalty of equal amount. Penalty of Rs.1 lakh stands imposed on Shri A.K. Khanna , prop. of M/s Khanna Traders. The order of the original authority stands upheld by the Commissioner (Appeals).

4. Learned Advocate for the appellants submits that there was no evidence to show that the goods were manufactured from Patparganj unit of the appellant company. The panchnama indicated that the said goods were manufactured by another company with the same name from Jalna.

5. Learned SDR reiterates the finding of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. After making seizure of unaccounted goods from the premises of a trader (that is Khanna Traders), the officers have not chosen to conduct any investigation

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with the said Khanna Traders. There is no indication that any statement has been taken from the alleged manufacturer, M/s Sanket Food Products , Patparganj. Show cause notice refers to the statement of the Flat owner. It also proceeds on the assumption that as none approached in the office till 11.7.02 for producing duty paying documents for the detained goods, the report of the officers dated 15.7.02 should be relied upon and it has been presumed that the appellant company is the manufacturer. The original authority disregarding the invoices produced by Khanna Traders held that the goods are not accounted for and are liable for confiscation. One ground on which the documents have been disregarded is that some of the invoices produced related to the later period and this is a valid ground. This shows that the licit possession of the goods has not been fully proved by the traders from whom the said goods were seized. Therefore, the confiscation of the said goods has to be upheld. The traders having procured the excisable goods without the supporting duty paying documents is also liable to penalty. However, no evidence has been brought upon to link the goods seized from M/s Khanna Traders as clearance from the appellant company. The detention panchanama which was prepared in the presence of witnesses clearly refers to the marking on the pouches as product of M/s Sanket Food Products, Jalna. The trader from whose custody the goods have been seized has also been sending sale invoices from the company bearing the same name as Sanket Food Products. In the absence of further investigation , the claim of M/s Khanna Traders that goods have been received from Jalna manufacturer bearing the same name cannot be brushed aside. Therefore, the demand of duty adjudged against the appellant company and imposition of penalty on the appellant company require to be set aside. However, the confiscation of the goods and imposition of penalty on M/s Khanna Traders have to be upheld. Redemption fine imposed is not excessive and therefore, the same are not interfered with. In the facts and circumstances of the case, penalty

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imposed on M/s Khanna Traders is reduced from Rs.1 lakh (rupees one lakh) to Rs.50,000/- (rupees fifty thousand).

7. The appeal by M/s sanket Food Products is allowed. Appeal by M/s Khanna Traders is partly allowed as above.

M. Veeraiyan

(M. Veeraiyan)
Member (Technical)

scd/