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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 17/08/2009

Appeal No. E/1260/2007-1261/2007 - SM (BR)

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

To :
M/S KHANDELWAL INDUSTRIAL ENTERPRISES
72-80, INDUSTRIAL ESTATE, NUNHAI AGRA 282006 Appellant
M/S KHANDELWAL INDUSTRIAL ENTERPRISES
Vs
Respondent
C.C.E. KANPUR

I am directed to transmit herewith a certified copy of **Final order No. 924- 925 / 2009-SM[BR]** dated 30.7.2009 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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   NONE;--------------

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
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Assistant Registrar
(SM Appeal Branch)

3. SHRI AMBESH KUMAR BANSAL, TRUCK OWNER
F-527. KAMLA NAGAR, AGRA, (U.P.)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-IV

Date of hearing/decision: 30.7.2009

Central Excise Appeal No.1260 of 2007-SM

Arising out of the order in appeal No.44-46/CE/APAPL/KNP/07 dated 25.1.2007 passed by the Commissioner (Appeals),Central Excise, Kanpur.

Central Excise Appeal No.1261 of 2007-SM

Arising out of the order in appeal No.44-46/CE/APAPL/KNP/07 dated 25.1.2007 passed by the Commissioner (Appeals),Central Excise, Kanpur.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
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

1. M/s Khandelwal Industrial Enterprises .... Appellants
2. Ambesh Kumar Bansal, Truck Owner

Vs.

C.C.E., Kanpur .... Respondent

Appearance:

None for the appellants
Shri S. Gautam, Authorized Departmental Representative (SDR) for the Revenue

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

Oral Order No. 924 - 925/2009 SM(Br)

Per M. Veeraiyan:

These two appeals arise out of the same impugned order of the Commissioner (Appeals) No. 44-46/CE/APAPL/KNP/07 dated 25.1.2007.

2. Appeal No.E/1260/07 is by Khandelwal Industrial Enterprises against imposition of redemption fine of Rs.25,000/- and penalty of Rs.5,000/-.

3. Appeal No.E/1261/07 is by Ambesh Kumar Bansal, Truck Owner against the redemption fine of Rs.5,000/- on the vehicle used for transport.

4. Heard the learned SDR . None appears for the appellants. There are written submissions filed on behalf of the appellants which have been taken into account.

5. The appellant firm M/s Khandelwal Industrial Enterprises was apparently involved in the manufacture of excisable goods meant for export. It is claimed that as per the Board's instruction vide C.No.209/29/97-CX-6 dated 20.5.94, the export units whose domestic clearances are below exemption limit are not required to take registration and therefore, are not required to follow AR-4/AR-4A procedure. Consignment valued at Rs.14,34,600/- belonging to appellant firm has been intercepted by the officers in transit as they were found transported without accompanying any document. The plea taken by them was that they were not required to take registration and are not required to follow the AR-4/AR-4A procedure. The original authority confiscated the goods valued at Rs.14,34,600/- seized on 31.5.95 and allowed the same on payment of redemption fine of Rs.25,000/- and imposed penalty of Rs.5,000/- under Rule 173Q. He also ordered confiscation of the truck used for transport without documents and imposed redemption fine of Rs.5,000/-. These two portions of the order of the original authority have also been upheld by the Commissioner (Appeals). I am not concerned in these proceedings on the other portions of the order of the original.

6. Learned DR submits that the waiver of requirement of registration does not imply that the unit manufacturing excisable goods need not maintain any record of manufacture and also clear the goods without any document.

7. I have carefully considered the submission of the learned SDR and the written submissions filed on behalf of the appellant firm and perused records. The exemption from registration and following the procedure of AR-4/AR-4A does not give a blanket permission to the appellant firm in not maintaining any record of its production and clearance and transport the goods without any transport documents. If this is permitted, monitoring that their clearances are within the exemption limit will be difficult as the exemption from registration is conditional.

8. In view of the above, confiscation of the goods valued at Rs.14,34,600/- transported without any document is justified. Confiscation of the vehicle used for transporting the said goods without transport document is also justified. Further, the redemption fine of Rs.25,000/- imposed is only nominal and does not warrant any interference . Similarly, redemption fine imposed on the vehicle used for transportation without document is also not excessive. Penalty of Rs.5,000/- imposed on the applicant firm is also not excessive and is justified.

9. The appeals therefore, fail and are accordingly, rejeced.

(M. Veeraiyan)
Member (Technical)

scd/