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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/1208 – 1209 / 2007 –SM[BR] Date 05/10/2009

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

To :
(1-2) SARUP TANNERIES LTD.
(UNIT-II), 141, LEATHER COMPLEX, KAPURTHALA
ROAD, JALANDHAR.,
SARUP TANNERIES LTD.

Appellant
Vs
Respondent

C.C.E. CHANDIGARH (JALLANDHAR)

I am directed to transmit herewith a certified copy of **Final order No.** 1181 – 1182 / 2009 –SM[BR] dated 13.8.2009 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. CHANDIGARH (JALLANDHAR)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   MR.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

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 AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.1208-1209 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.35-36/CE/Appl/Jal/07 dated 31.01.2007 22-CE/MRT-II/2007 dated 23.05.2007 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:13.08.2009

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? : 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

Sarup Tanneries Ltd. ...Appellants
(Rep. by Shri Sudhir Malhotra, Advocate)

Vs.

CCE, Jalandhar ...Respondent
(Rep. by Shri I.K. Bagi, SDR)

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

Final Order No.1181-1182/2009-SM(BR) Dated:13.08.2009

Per P.K. Das:

Both the appeals arise out of a common order and, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Leather Shoes and Upper Soles classifiable under Chapter 64 of the Schedule to the Central Excise Tariff Act, 1985. During scrutiny of the ER-I Return, it was noticed that the appellant availed Cenvat credit for the period May, 2004 to September, 2004 and April, 2005 to January, 2006 amounting to Rs.3,38,548/- and 1,42,585 respectively. The appellants availed credit under Rule 16 of the Central Excise Rules on the duty paid returned goods. Two show cause notices were issued proposing to deny the credit on the ground that credit availed by them would not represent the amount of duty actually paid by them and there was no mention of the invoice number under which the goods were earlier cleared. The Original Authority confirmed the demand of duty of Rs.3,38,548/- and Rs.1,42,585/- and also imposed penalty of Rs.20,000/- and Rs.15,000/- respectively. The Commissioner (Appeals) upheld the adjudication orders.

2. Ld. Advocate on behalf of the appellant submits that they have received the duty paid returned goods and availed credit under Rule 16(1) of the Rules on the basis of supplier's invoice accompanied with the appellant's original invoice. He also submits that the goods were rectified and thereafter cleared on payment of duty with the intimation to the Jurisdictional Superintendent of Central Excise and produced the copy of letter dated 12.08.2009. He also submits that the Commissioner (Appeals) erroneously observed that the appellant failed to produce any evidence in

respect of receipt of the duty paid goods. He also submits that annexure to show cause notice is showing the details of the name of the parties from whom the goods were received. He further submits that further opportunity may be given to produce the documents before the adjudicating authority.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the appellants did not produce any evidence in respect of the receipt of the duty paid returned goods before the Original Authority as well as the Commissioner (Appeals). He also submits that 5 years have already been elapsed and, therefore, the clearance of the duty paid returned goods as revealed from the letter dated 12.08.2009 has no relevancy. He further submits that it is revealed from the adjudication order that the Range Superintendent made enquiry and found that the duty paid returned goods are not rectifiable. He further submits that the appellants by letter dated 21.08.2006 and 24.08.2006 admitted that the goods are not rectifiable.

4. After hearing both the sides and on perusal of the records, it is revealed from the order of the Commissioner (Appeals) that the appellant had categorically admitted vide their letter dated 21.08.2006 and 24.08.2006 that the goods in question are not rectifiable. It is observed that the appellants did not produce the details of the credit taken and the invoice on the strength of which the credit was taken, before both the authorities below. It is seen from the adjudication order that the

jurisdictional Range Officers enquired the matter and submitted a report to the Original Authority, as under:-

> " The matter was referred to the Range Officer to check and report whether the said goods received back about two years ago had been cleared by the Noticee. If so, what processes were carried out and whether these processes are covered under the definition "Manufacture" as stipulated in Rule 16(2) above. The Range Officer vide his letter dated 31.08.2006 has reported that out of total quantity, only 266 pairs of shoes involving CE duty of Rs.33874/- could be cleared by the party on payment of duty even after the expiry of two years. For the remaining quantity the party vide their letter dated 21.08.2006 and 24.08.2006 have reported that these are not rectifiable."

5. The ld. Advocate placed the letter dated 12.08.2009 of the appellant addressed to the jurisdictional Superintendent that the said goods were cleared on payment of duty. I find that the appellant already declared by their letter dated 21.08.2006 and 24.08.2006 that the goods are not rectifiable. The Jurisdictional Central Excise Officers had also found that the goods are not rectifiable. Therefore, the letter produced by the ld. Advocate is misconceived.

6. Rule 16 of the Central Excise Rules, 2002 provides that where any goods on which the duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt of goods in his record and shall be entitled to take Cenvat credit on the duty paid as if such goods are received as inputs under the Cenvat Credit Rules, 2002 and utilise this Credit according to the said Rules. In the

present case, the appellant stated that the goods are not rectifiable. It is also seen that they have not produced the records as required under the Rule. Hence, the demand of duty and penalty are justifiable.

7. In view of the above discussions, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, both the appeals are rejected.

Order dictated & pronounced in open court on 13.08.2009.

(P.K. Das)
Member (Judicial)

Ckp.