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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/2425/2007 – SM[BR] Date 09/10/2009

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S TRELA FOOTWEAR EXPORT(P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1205 / 2009 –SM[BR] dated 16.9.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S TRELA FOOTWEAR EXPORT(P) LTD.
   D-18, SITE-C, INDUSTRIAL AREA, SIKANDRA, AGRA.
2. Adv. / Consult SHRI HEMANT BAJAJ ADV.
   A-5, BASMENT LAJPAT NAGAR –III
   NEW DELHI

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-IV

Date of hearing/decision: 16.9.2009

Central Excise Appeal No.2425 of 2007-SM

Arising out of the order in appeal No.244-CE/APPL/KNP/2007 dated 29.6.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur.

For Approval and Signature:

Hon'ble Shri 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?	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

C.C.& C.Ex., ... Appellant
Kanpur

Vs.

M/s Trela Footwear Exports (P) Ltd. .... Respondents

Appearance:

Shri V.K. Saxena, Authorized Departmental Representative (Jt.CDR) for the Revenue and Shri Hemant Bajaj, Advocate for the respondents

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

Oral Order No. 1205/2009 SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 244-CE/APPL/KNP/2007 dated 29.6.2007 by which the order of the original authority confiscating the raw materials and finished goods not accounted and imposing penalty was set aside.

2. Heard both sides.

3. The relevant facts, in brief, are that the respondents are manufacturers of PU Soles and PVC Soles. When the officers visited on 19.11.2005 and commenced verification of the stock of raw materials and

finished goods, it was noticed that 3662 kgs. of raw materials like Isocynate, Polyol, MCL and Brown valued at Rs.3,97,997/- and finished goods numbering 43202 valued at Rs.7,72,000/- were found not entered in the accounts. The authorised signatory Shri Uma Shankar on feigned ignorance and submitted that only the Director could explain the reasons for goods found in excess. However, Shri Nitin Sachdeva, Director did not appear for summons dated 13.3.06, 4.4.06 and 27.4.06 , but he authorised Shri Uma Shankar to give the statement on his behalf. Shri Uma Shankar who feigned ignorance on the day of visit by the officers gave statement on 11.5.06 and claimed that excess raw materials found were due to mistake of labourers; that the finished goods found excess have not reached the marketable stage awaiting quality control tests. On the basis of show cause notice issued alleging that the excess found materials were meant for clandestine removal, the original authority confiscated the excess found raw materials and the finished goods but allowed the same to be redeemed on payment of fine of Rs.2,92,499/-. He also imposed penalty of Rs.1,87,200/- under Rule 25(1(b) read with Section 11AC. Commissioner (Appeals) accepting the plea of the party allowed the appeal. Hence the Department is in appeal.

4. Learned Jt.CDR submits that it is a case of huge shortage of raw materials and finished goods. The Panchanama, which included stock verification report in the presence of independent witnesses, is not being disputed by the respondents. The authorised signatory gave belated explanation that the goods have not been subject to certain tests without producing any evidence to substantiate the said belated claim. He submits that the order of the Commissioner (Appeals) should be set aside and the order of the original authority should be restored. The learned Jt.CDR also relies on the decision of the Tribunal in the case of PNP Castings (P) Ltd. vs.C.C.E., Lucknow reported in 2006 (194) ELT 250 (Tri-Del.) and contends that there is no requirement of any intent to evade payment of duty to confiscate the goods which are not accounted.

5. The learned Advocate for the respondent submits that the Commissioner (Appeals) has clearly held that the so-called finished goods

have not reached the marketable condition. This finding of the fact has not been challenged by the Department in their grounds of appeal. He also submits that the goods were awaiting quality control tests and have not reached the marketable stage. He relies on the decision of the M.P. High Court in Supreme Industries Ltd. reported in 2007 (214) ELT 187 (M.P.) in this regard.

6. I have carefully considered the submissions from both sides. The panchanama including the verification of the stock report have been prepared in the presence of authorised signatory and in the presence of independent witnesses. There is a clear finding by the original authority that the same are not disputed by the respondents. The authorised signatory who was not able to explain the discrepancy on the date of visit officers gave belated explanation on 11.5.06 stating that the raw materials were not accounted due to mistake of the labourers and the so-called finished goods have not reached the marketable condition. This , in my view, is clearly a tutored version. Further, it is noticed, from the order in original, that opening balance of PVC soles on the date of visit was 15,029 pairs and the production for one day was only 6,156 pairs and the clearance for the day was 1200 pairs. However, the stock found was 54,528 pairs showing the excess of stock as much as 34,543 pairs. Similar is the position in respect of other varieties of goods. Apparently, this accounts for several days' production. Their claim that such huge quantity was lying without conducting test have to be viewed with caution. Especially because, the authorised signatory has taken such a plea after several months after claiming that he did not know the reason and only the director knew the reason. They have not challenged the panchnama and the stock verification report promptly. The discrepancy in respect of other items are also not satisfactorily explained. As submitted by the learned Jt.CDR, the obligation to account for the raw materials received/ issued and to account for finished goods manufactured by any assessee is a strict obligation. On failure to fulfil the said obligation there is justification for confiscation of the goods. Having said that, it is to be observed that the allegation of clandestine removal is a serious charge. The presumption that

the raw materials and the finished goods lying in excess were meant for clandestine removal is not justified in the absence of any corroborative evidence like private records indicating any such removal in the past or seizure of any goods so removed from the factory or other reliable evidence. In other words, it emerges that the respondents have clearly failed in accounting the raw materials and the belated claim that it was due to mistake of labourers cannot be accepted. Similarly, failure in not accounting the finished goods was sought to be explained that the said goods have not reached the marketable condition. This is also clearly an after-thought and does not deserve to be accepted. Therefore, the order of the Commissioner (Appeals) requires to be set aside. However, while restoring the order of the original authority, considering the absence of evidence of any clandestine removal, there is a scope for reduction in the quantum of redemption of fine and penalty. Accordingly, I reduce the redemption fine imposed from Rs.2,92,499/- to Rs.75,000/- and the penalty from Rs.1,87,200/- to Rs.50,000/-.

7. The appeal is disposed of as above.

(M. Veeraiyan)
Member (Technical)

scd/