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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/2277/2007-2278/2007 – SM[BR] Date 14/10/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S SURYA FOOD & AGRO LTD. (UNIT-III)
2. B.P. AGARWAL, DIRECTOR M/S SURYA FOOD & AGRO LTD. UNIT-III

C-4, INDL. AREA, SAROJINI NAGAR, KANPUR ROAD,
LUCKNOW, U.P.

M/S SURYA FOOD & AGRO LTD. (UNIT-III) Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1247 -1248 / 2009 –SM[BR] dated 18.8.2009 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. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
   MR.SURENDER PRASAD
   40/159, C.R PARK, NEW DELHI-110019
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

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Appeal No.E/2277-78/2007-SM

[Arising out of Order-in-Appeal No.45-CE/07 dated 27.04.2007 passed by the Commissioner of Central Excise (Appeals), Lucknow].

Date of Hearing:18.08.2009
Date of decision: 18.08.2009

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?	
2	Whether it should be released under Rule 27 of the 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?	
4	Whether Order is to be circulated to the Departmental authorities?	Yes

1. M/s. Surya Food & Agro Ltd. &
2. Shri B.P. Agarwal ...Appellants

Vs.

CCE, Lucknow ... Respondent

Present for the Appellant :Shri. Surender Prasad, Advocate
Present for the Respondent:Shri.I.K. Baig, SDR

CORAM: HON'BLE MR. P.K.DAS, MEMBER (JUDICIAL)

Final **ORDER NO.** 1247-1248/2009 SM(BR) **DATED:18.08.2009**

PER: P.K. DAS

Ld. Advocate on behalf of the appellants submits that Appellant No.1 filed appeal to the extent of confiscation of 6002 boxes of biscuits and imposition of redemption fine of Rs.2,62,000/- and penalty of Rs.1,04,680/-, thereon. He also submits that Appellant No.2 Director of the appellant company filed appeal in respect of imposition of penalty of Rs.1,56,425/-. He submits that the appellant Company are engaged in the manufacture of Priya Gold brand Biscuits falling under sub-heading No.1905.11 of the Schedule to the Central Excise Tariff Act 1985. On 08.11.2004 the Central Excise Officers visited their factory and conducted stock verification. It was found that there were 6002 boxes of biscuits at packing hall. He further submits that during examination of the records the officers found that they have taken Cenvat Credit of Rs.7,492/- wrongly which they have immediately reversed. He also submits that 105 numbers of printed laminated rolls were confiscated and redemption fine and penalty was imposed. He fairly submits that appellant is not contesting the other issues. The main contention of the ld. Advocate is that it is revealed from the statement of the authorised signatory recorded on the spot that 6002 boxes were lying at the packing hall as the store room was full to its capacity. The allegation in Show Cause Notice is that the goods were kept with an intention to remove clandestinely without any basis. Regarding imposition of penalty on the Director, he submits that the Director is sitting in registered office at Noida. He is not concerned with day to day affairs of the factory situated at Sarojini Nagar, Kanpur Road, Lucknow. He relied upon the decisions of the Tribunal as under:-

a) Thermoflex Cable Industries vs. Commissioner of Central Excise, Mumbai-II reported in 2006 (196) E.L.T. 124 (Tri.-Mumbai)
b) CCE, Coimbatore vs. Sasidhara Dyers reported in 2003 (88) ECC 336 (Tri.)
c) CCE, Calicut vs. Steel Complex Ltd., reported in 2006 (132) ECR 0211 (Tri. - Bangalore)
d) Shrikant Processors (P) Ltd. vs. CCE, Jaipur, reported in 2006 (111) ECC 0528.

2. The Ld. DR on behalf of the Revenue submits that admittedly 6002 boxes were found excess over recorded balance in the RGI Register, which is confiscated under Rule 25 of Central Excise Rules 2002. He also submits that the goods were lying in the packing hall has no relevance as it was out of the store room. He also submits that store room was full and therefore they have kept their goods in their packing hall, but it was not entered in the R.G.I register.

3. After hearing both the sides and on perusal of records, it is seen that the Central Excise Officers visited the appellant's factory on 8th November, 2004 and conducted the stock verification. The said officers found 6002 boxes of biscuits at the packing hall. The said officers detected irregular Cenvat credit of Rs.7,492/- and seized 105 Nos. printed laminated roll, which are not contested by the appellant. In the show cause notice dated 14.05.2005, it has been alleged that 6002 Boxes of biscuits involving Central Excise Duty of Rs.1,04,680.00 were kept in the factory premises of the party unrecorded, with an intention to remove the same clandestinely without payment of duty in contravention of Rule 10 of Central Excise Rules. Regarding seizure of 6002 boxes, the authorised signatory in his statement dated 08.11.2004 on the spot stated as under:-

> *"So taking into account the days production to 2nd shift the excess stock of 6002 CB of gold biscuits found in this regard, I have to submit that we have finished product store room adjacent our packing hall. And we record only that finished products stock which is shifted to the store room from the packing hall. But due to the demand of the production, our store room is full to its capacity.*
>
> *We were not able to shift our all the production of the previous days to the store room due to paucity of*

space. And to our regular production to take only finished production lying in the finished production store and production in our RG 1 Register. Hence, the production lying in the packing hall were not taken/ recorded in the RGI Register. And that is the production which has been found excess. The goods found in excess is complete in all respect as for the packing and production in all respect are for packing and the production is concerned. No further activity remained for the completion of the manufacturing process."

4. It is revealed from the impugned order of the Commissioner (Appeals) that the appellant took a stand before the appellate authority that the goods were in semi-finished conditions. It is seen from the above statement that the authorized signatory admitted that the goods were in finished condition. So, the contention of the appellant that the goods were in semi finished condition cannot be accepted. It appears from the statement that the store room was full to its capacity and therefore, they had compelled to keep said quantity in their packing hall. This fact was not disputed by the ld.DR. The contention of the ld. DR is that goods are lying outside of the store room in a finished condition and therefore, it is liable to be confiscated under Rule 25. It is apparent from the statement of authorized signatory that the appellant was compelled to keep the goods outside of the store room due to unavoidable circumstances. There is no material available that the goods were kept in packing hall with intention to remove clandestinely. The appellant explained the reason for keeping the goods at packing hall as there was no space in store room, which was not disputed by the Department, and therefore confiscation is not justified. The Hon'ble Calcutta High Court in the case of Extrusion vs. Collector of Customs, Calcutta 1994 (70) ELT 52 (Cal.) held that merely because the goods are liable to confiscation it is not always necessary to impose a fine in

lieu of confiscation. The conduct and/ or attending extenuating circumstances are material and relevant.

5. Regarding imposition of penalty on Appellant No.2, I find that Commissioner (Appeals) had not given any finding. In any event, Original Authority observed that Shri V.P.Aggarwal, Director of the appellant company had not appeared in response to his summons. It appears that the Director of the Company is sitting in the Registered Office at Noida. There is no evidence on record that the Director of the Company was looking after day-to-day affairs of the factory at Kanpur. Hence, the penalty imposed on the Director of the company is not warranted.

6. In view of the above discussions, the impugned order is modified in so far as in appeal No.E/2277/07/SM, confiscation of 6002 boxes of Biscuits and imposition of redemption fine are set aside. The penalty imposed on Director in appeal No.E/2278/07/SM is set aside. Appeal is allowed with consequential relief.

[Dictated & Pronounced in the open Court].

(P.K.DAS)
MEMBER (JUDICIAL)

Anita