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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/55 /2008 – SM[BR] Date 08/01/2010

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

To :
M/S INDOCAT FOOTWEAR
31, FAZALGANJ, KANPUR

M/S INDOCAT FOOTWEAR Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 21 / 20[illegible] –SM[BR] dated 1.1.2010 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
MR.AMIT AWASTHI
113/145, SWARUP NAGAR, KANPUR-208002

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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.55/2008-SM(Br)

(Arising out of order in appeal No.299/CE/Appl/Knp/2007 dated 21.8.07 passed by the Commissioner of Central Excise (Appeals), Kanpur)

M/s Indocoat Footwear — Appellant

Vs

CCE, Kanpur — Respondent

Appeared for Appellant : Shri Amit Awasthi, Advocate
Appeared for Respondent : Shri S.K. Bhaskar, DR

Date of Hearing: 14.12.09

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**

Final Order No. 21/2010 SM (Br)/2009

Per D.N. Panda:

Learned Counsel submits that the appellant sent the moulds for repair and painting to M/s L.R. Moulds of Kanpur. For such reason, those were not found during the course of investigation by the preventive officers on 3.1.2005. Neither record of M/s. L.R. Moulds was verified nor any records were called for from them to test the veracity of claim. No show cause notice was issued to M/s L.R. Moulds to examine the goods lying with them. Had the authorities properly examined record of both or had enquired or tested the documents, the appellant should have no grievance against Revenue.

2. Appellant's counsel further pleads that the authorities failed to examine the record of M/s L.R. Moulds as well as entire chain of dispatch of the goods from the factory of the appellant to the destination at the end of M/s L.R. Moulds. Nor also the authority examined evidence relating to the return of the goods. Had the authorities examined entire facts and circumstances as well as evidence, the truth could have come out and Cenvat credit would have been made admissible to appellant. There was no allegation coming out from the order of original authority about any of the goods were whether deliberately pilfered for which the appellant shall face denial of credit as well as imposition of penalty. Therefore, he prays for remand of the matter to grant him an opportunity of leading entire defence and place its case for scrutiny. According to him, not only Cenvat credit is admissible on moulds to the tune of Rs.54,835/- but also such credit is admissible Rs.24,859/- on Paris of plaster.

3. Learned DR supports the order of the authorities below.

4. Heard both sides and perused the record. The adjudication finding appearing at page 22 of the order in original shows that the documents produced subsequent to issuance of show cause notice has no basis to establish the removal of capital goods. Such proposition is untenable in the eye of law, when reason of non-production was not tested. The reason may be preventable. But no test was done. The order does not speak whether entire chain of evidence relating to dispatch of moulds and plaster of paris establishes the allegation, is not tested. If any evidence establishes

no movement of goods or pilferage thereof was deliberate to evade revenue, the appellant should be called upon to suffer duty liability. But the authorities have not examined the destination based evidence on record. Mere non-production of evidence before the investigating authority does not *ipsofacto* give rise to duty liability since adjudicating authorities are required to examine the allegation on the touch stone of law. With casual observation in the adjudication, no one can be compelled to suffer. Aforesaid observations call for remand of the matter to the learned Adjudicating authority for re-doing the adjudication in accordance with law. Accordingly, impugned order is set aside and the matter remanded

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*