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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/281 /2005 - SM Date 16/10/2009

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

To :
M/S BRITANNIA INDUSTRIES LTD

33, LAWRENCE ROAD, DELHI 110035

M/S BRITANNIA INDUSTRIES LTD Appellant

Vs

C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1277 / 2009 –SM[BR] dated 26.8.2009 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. DELHI I

C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

2. Adv. / Consult

MR.R. KRISHNAN

297-E, POCKET-II, PHASE-I, DELHI-110 091.

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 & SERVICE TAX APPELLATE TRIBUNAL,
## WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

## COURT – III

## CENTRAL EXCISE APPEAL NO. 281 OF 2005-SM

[Arising out of Order-in-Appeal No. 144-CE/DLH/2004 dated 26.10.2004 passed by the Commissioner (Appeals), Central Excise, New Delhi]

**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 would 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 |

M/s. Britania Industries Ltd., Appellants

Vs.

CCE, Delhi-I Respondent

**Appearance:**

Shri R. Krishnan, Advocate for the assessee;
Shri S.K. Bhaskar, SDR for the Revenue

**Coram:**

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

**Date of hearing/decision: 26th August, 2009**

**FINAL ORDER NO.** 1277/2009-SM (BR) **dated** ________

**Per P.K. Das:**

The appellants filed this appeal against rejection of refund claim of Rs. 91,386/-. Refund was rejected on the ground that the appellants failed to establish that incidence of duty has not been passed to any other person.

2. After hearing both sides and on perusal of the records, it is seen that the appellants cleared Biscuits "Good Day Butter" declaring MRP of Rs. 660/- instead of Rs. 600/- due to wrong feeding of data in computer while preparing invoices and discharging duty liability. For the purpose of proper appreciation of the facts of the case, finding of the Commissioner (Appeals) is reproduced below:-

"It is therefore apparent that the wholesale prices were not affected by the quantum of central excise duty whether paid less or more at the time of removal of goods and the customers of the appellants i.e. wholesale dealers were also not aware of the amount/rate of duty paid by the appellants as the wholesale prices were inclusive of excise duty and were different for different states and cities. Since the invoices raised from the appellant's depots were not transparent enough to make the customers i.e. wholesale dealers aware of the quantum of incidence of duty and the appellant's Depots have been charging different wholesale prices from their wholesale dealers for the same product as discussed above it becomes impossible to arrive at the conclusion that the incidence of duty has not been passed on to the customers in the instant case where duty has been undoubtedly paid on the higher side by mistake while feeding wrong MRP in the computer."

3. The main contention of the learned Advocate is that on earlier occasion the Commissioner (Appeals) allowed the refund accepting the clerical error in the computer. On the other hand learned D.R. submits that in terms of ~~Rule~~ Section 12D of Central Excise Act, 1944 which provides that every person who has paid the duty of excise on any goods under this fact, shall unless contrary is proved, deemed to have been passed the incidence to the buyers of such goods. He also relied upon the decision of the Hon'ble Supreme Court in the case of UOI vs. Solar Pesticides Pvt. Ltd., reported in 2000 (116) ELT 401 (SC).

4. I find that the Commissioner (Appeals) accepted the excess payment of duty by mistake by wrong feeding MRP in the computer. It is seen that on the identical situation the Commissioner (Appeals) allowed the refund claim on the same ground. On query from the Bench the Learned Advocate submits that no appeal was filed by the Revenue against the said order of the Commissioner (Appeals). I find that the department verified the wholesale price and the wholesale price were not effected by the quantum of central excise duty paid less or more at the time to removal of the goods. It is seen that payment of excess excise duty is purely a mistake due to wrong feeding of MRP in the computer.

So, there is no reason to deny the refund of duty. The case law relied upon by the learned D.R. is in respect of captive consumption which is not applicable in the present case.

5. In view of the above discussion, I set aside the impugned order and allow the appeal with consequential relief.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK