

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/2495/2007 - SM[BR]

Date 29/10/2009

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

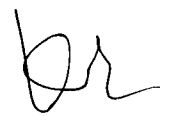
To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH

Appellant

Vs
Respondent

M/S FEDERAL MOGUL GOETZE (INDIA) LTD.

I am directed to transmit herewith a certified copy of Final order No 1329 / 2009 -SM[BR]. dated 21.10.2009
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 FEDERAL MOGUL GOETZE (INDIA) LTD.
BAHADURGARH, PATIALA.

2. Adv. / Consult SHRI R.K. HASHIJA ADV.
N/V;-----

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 Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

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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 (Harvana)

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17 Guard file



Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 21.10.2009

Central Excise Appeal No.2495 of 2007-SM

Arising out of the order in appeal No.184/CE/CHD/2007 dated 14.6.2007 passed by the Commissioner(Appeals), Central Excise, Chandigarh.

For Approval and Signature:

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

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	MA
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.E., Chandigarh

....

Appellant

Vs.

M/s Federal Mogul Goetze (India) Ltd.

....

Respondent

Appearance:

Shri S.K. Bhaskar, Authorized Departmental Representative (SDR) for the Revenue and Shri R.K. Hashija, Advocate for the respondent

Coram: Hon'ble Shri P.K. Das, Member (Judicial)

Oral Order No. 1329/2009 SM (Br)

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals) whereby the adjudication order was set aside.

2. After hearing both sides and on perusal of the records, it is seen that that the respondents received back the duty paid goods from their sales depots for re-conditioning and repairing etc. under Rule 16(3) of Central Excise Rules, 2002. The respondents cleared the duty paid returned goods after reprocessing without payment of duty. Show cause notice was issued proposing to demand of duty of Rs.1,72,412/- and to impose penalty along with interest on the ground that the procedure prescribed under the Trade

Notice No.3/2002 dated 30.1.2002 issued by the Commissioner , Central Excise , Chandigarh was not followed while clearing the duty paid returned goods. The original authority confirmed the demand of duty and imposed equal amount as penalty along with interest. Commissioner (Appeals) set aside the adjudication order.

3. Learned SDR submits that the respondents have not followed procedure as prescribed in Trade Notice and therefore, the demand of duty and imposition of penalty are justified. He also submits that Trade Notice was issued in terms of Rule 16 of the Rules and compliance of the Trade Notice is mandatory.

4. Learned Advocate on the other hand submits that they have cleared the goods on the basis of the permission issued by the proper authority which is duly recorded in the adjudication order as well as in the order of the Commissioner (Appeals). He also submits that there is no mention of violation of the specific condition of Trade Notice. He also relied upon the decision of the Tribunal in their own case vide Final Order No.1051/08-SM dated 2.6.08.

5. For the purpose of proper appreciation, the relevant portion of the finding of the Commissioner (Appeals) is reproduced below:

" From the records I find that the appellants have paid duty on the goods which were received back from their sales depots for reconditioning, reprocessing etc. The Department has not produced any evidence to indicate that the processes undertaken by the appellants amounted to manufacture. I have perused copy of letter bearing C.No.IV(16)/Tech/182/06/95 dated 8.1.07 and I find that the Commissioner , Central Excise Chandigarh has granted permission to the appellants under Rule 16(3) for the financial year 2006-07. On the face of these findings, the charge that the appellants had not obtained permission is devoid of any merit. No case for demand of duty is made out against the appellants. The order appealed against is set aside."

6. The main contention of the learned SDR is that the respondents had neither followed the procedure prescribed nor obtained prior permission from

the Commissioner for removal of the duty paid returned goods subject to fulfilment of the condition. On perusal of the adjudication order as well as the order of the Commissioner (Appeals) I find that there is no mention in the impugned order as to which condition the respondents have violated. So the submission of the learned SDR cannot be accepted. It is seen that the Tribunal in their case on identical issue vide order dated 2.6.08 rejected the appeal filed by the revenue. The relevant portion of the said order is reproduced below:

"5. The Revenue contended in the Grounds of Appeal that the party was required to follow proper procedure for availing Cenvat credit in terms of Rule 16 of the Central Excise Rules, 2002, in case the duty paid goods were received back by them for carrying out further processes. In the instant case, it is seen that the respondents had not availed the Cenvat credit on the defective finished goods received by them. They also not paid the duty on the clearance of the defective goods. The Tribunal in the case of Pepsi Foods Pvt. Ltd. (supra) held that no duty is payable in respect of defective goods, which are received by a manufacturer and returned after re-processing.

6. Ld. Advocate submits that the decision of the Tribunal in the case of Pepsi Foods (P) Ltd. (supra) was upheld by the Hon'ble Supreme Court as reported in 2004 (169) ELT 836 (SC). I find that the Commissioner (Appeals) allowed the appeal after examining the documents, as mentioned above. Revenue has not disputed the examination of the records by the Commissioner (Appeals) in their appeal. Therefore, I do not find any merit in the appeal of the Revenue. Accordingly, the appeal filed by the Revenue is rejected."

7. In view of the above discussion, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(P.K. Das)
Member (Judicial)