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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/3186/2010 – SM [BR] E / STAY / 2970 / 2010-SM[BR]** Date **28/04/2011**

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

To :
M/S ANIL KUMAR, PROP. ROSHAN LAL & SONS,
DHAULAN KUAN, THE PAONTA SAHIB, DISTT.
SIRMOUR (H.P.)
M/S ANIL KUMAR, PROP. ROSHAN LAL & SONS, Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.216 /2011-SM[BR]&S/182/2011** Dated15.4.2011 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.G.S.BHANGOO
H.NO. 5, SECTOR-10A, CHANDIGARH.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 3186 of 2010-SM(BR)
Excise Stay Application No. 2970 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. 88-CE/CHD-I/2010 dated 5.7.2010 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters 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 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? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Shri Anil Kumar — Appellants

Vs.

Commissioner of Central Excise
Chandigarh — Respondent

Appearance:
Shri Vikrant Kackaria, Advocate for the Appellants
Ms. R. Prasad, SDR for the Respondent

Final

Date of Hearing/decision : 15.04.2011

ORAL ORDER NO. 216/2011 SM (BR)
S-182/2011 SM (BR)

<u>Per M. Veeraiyan</u>:

Heard both sides.

2. Considering the nature of dispute, after waiving the pre-deposit of dues as per the impugned order, I proceed to dispose of the appeal finally.

3. The appellants is in grocery business. On visit by the officers, they found 13,200 boxes of vintage filter cigarettes with total MRP value amounting to Rs.1,84,800/-. The appellants gave a story that some persons came in their own vehicles or by bus and sold these cigarettes without bills. It was also submitted that even though MRP printed on the boxes of 10 cigarettes was Rs.14/-, they have purchased the same at Rs.2.22 per box and sold at Rs.3.25 per box. The investigation with the brand owner and manufacturer M/s. Pelican Tobacco Co. Ltd did not reveal any discrepancy at their end and it was claimed by them that certain unscrupulous manufacturers were manufacturing cigarettes with their brand name and they have also filed suites in the Hon'ble High Court of Kolkata. In pursuance of show cause notice, original authority ordered confiscation of cigarettes valued at Rs.1,84,800/- (as per the MRP) but allowed the same to be redeemed on payment of redemption fine of Rs.1,50,000/-. He also imposed penalty of Rs.1,50,000/- under Rule 26 of Central Excise Rules, 2002. On appeal by the party, the Commissioner (Appeals) has given a finding that Rule 25 covers the producer, manufacturer, registered person of a warehouse owner or a

registered dealer and therefore the appellants company being not covered by the category of aforesaid persons, the provisions of Rule 25 was not applicable. However, he upheld the order of the original authority.

4. Learned Advocate submits that the cigarettes were seized on 4.10.07 and therefore they are not interested in exercising option for release even on reduced redemption fine. He submits that Commissioner (Appeals) having held that no penalty under Rule 25 is applicable, he was wrong in upholding the penalty of Rs.1,50,000/- imposed under Rule 26. The penalty, if any, can be under Rule 27 which is only a maximum of Rs.5,000/-.

5. Learned SDR submits that as per the statement of representative of the appellants, they were involved in wholesale business of grocery and buying and selling cigarettes. They have admitted having received cigarettes without bills and disposing it of. The seizure effected was of the quantity of cigarettes available on a particular day.

6. Considering that the appellant had agreed to abandone claim to the goods, the question of ordering redemption even on reduced redemption fine does not arise. The confiscation of the goods is upheld as contested. The Commissioner (Appeals) has held that Rule 25 of the Central Excise Rules is not attracted. However, it is found that the penalty has been imposed under Rule 26 of the Central Excise Rules. Considering that the investigation with the brand owner and manufacturer appears to suggest that the goods were fake in nature, the

quantum of penalty imposed on the appellant is very much on the higher side. Therefore, the penalty is reduced from Rs.1,50,000/- to Rs.20,000/- only.

7. The appeal is disposed of as above. Stay petition is also disposed of.

(M. Veeraiyan)
Member(Technical)

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