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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/2497/2009 – SM[BR]** Date **20/09/2011**

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

To :
M/S KURELE PAN PRODUCTS PVT. LTD.
C-87/1, B.S.ROAD, INDL. AREA, SITE-I, GHAZIABAD.

M/S KURELE PAN PRODUCTS PVT. LTD. Appellant
Vs
C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 621 /2011-SM[BR]** dated 2.9.2011 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. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302

13-10-11

2. Adv. / Consult SHRI RUPESH KUMAR ADV.
F-12A, KAILASH COLONY NEW DELHI-48.

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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT NO. II

Central Excise appeal No. 2497/2009-SM

Date of hearing/decision: 2nd September, 2011

M/s. Kurele Pan Products (P) Ltd., Appellant
Reptd. By Shri Rupesh Kumar Mishra, Advocate

Versus

CCE, Ghaziabad Respondent
Reptd. By Shri S.K. Panda, Jt.C.D.R.

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

FINAL ORDER NO. 621/2011 SM (BR) **DATED**

Per D.N. Panda:

1.1 This case was heard on 25.8.2011, 30.8.11, 1.9.2011 and today. Grievance of the appellant is that clearance of Kisan Gutkha made in the month of October, 2007 and November, 2007 in poly bags contained Gutkha of appropriate value as stated in column NO. 7 of Annexure to ER-1 return of these two months. Duty was paid thereon appropriately. But due to clerical mistake in the Annexure relating to Kisan Gutka (60 x 1.5 gms.) in the month of October, 2007 and Kisan Gutkha of the same description as well as Patel Gutkha (60 x 1.5 gms.) for November, 2007 quantity in column No. 6 of the Annexure has appeared erroneously. Such error gave rise to the dispute although substantially there was no difference in assessable value.

1.2 Learned Counsel Shri Rupesh Kumar placing Annexures to the returns of aforesaid two months explained that the assessable value declared in the returns for those two months do not vary with the value declared in invoices of those period resulting in clearance.

1.3 Placing Xerox copies of invoices of above two months in respect of Kisan Gutkha (60 x 1.5 gms.) he drew attention to invoice NO. 142 dated 30.10.2007 for corroboration of assessable value of that brand with annexure to ER-1 return. Similarly, he drew attention to the following invoices issued in the month of November, 2007 and claimed that the assessable value of poly packed goods relating to Kisan Gutkha as that appeared in invoice was exhibited by return of that month:-

INVOICE NO. & DATE	KISAN GUTKA (60X1.5 gms.)
151 dated 4.11.2007	18,720 poly packs
152 dated 5.11.2007	18,700 poly packs
Total	37,420 poly packs

In order to explain Patel Gutkha (60X1.5 gms.) he drew attention to following invoices:-

INVOICE NO. & DATE	PATEL GUTKA (60x 1.5 gms.)
148 dated 04.11.2007	19,040 poly packs
155 dated 07.11.2007	18,408 poly packs
156 dated 10.11.2007	2,380 poly packs

158 dated 11.11.2007 19,992 poly packs

Total 59820 poly packs

1.4 Learned Counsel, on the basis of aforesaid invoices submited that quantity of poly packs appearing in invoices with the corresponding aggregate assessable value of the respective brand of the goods were disclosed in Annexure to ER-1 return. He further drew attention to the show cause notice Para 5(a) to explain the nature of allegation made. According to him substance of the allegation was that quantity of clearance of Kisan Gutkha (60 x 1.5 gsm.) for the month of October, 2007 alleged to be different from production quantity. Similarly, clearance of Kisan Gutkha (60 x 1.5 gms.) for the month of November, 2007 has difference both in respect of poly pack and quantity cleared. Third allegation in respect of Patel Gutkha (60 x 1.5 gms.) for November, 2007 was that there was difference both in respect of poly packs and weight.

1.5. According to the appellant the alleged discrepancies arose due to closure of factory on 14.11.2007 (as per sealing report of Excise Authority) and Returns for the impugned months were prepared by a clerk through computer without proper computer knowledge. There was mechanical and clerical error. Number of Poly packs as appearing in the invoices the Annexures to the return and assessable value declared remained undisputed. Therefore, clerical mistake deserves consideration without any grave material against appellant. This is the submission for October, 2007.

1.6 So far as the month of November, 2007 is concerned, learned Counsel submits that clerical error can be appreciated from the face of Annexure itself because computer error occurred in granting serial number in column 1 of Annexure to the description of goods. Soon after serial No. 2,3,4,5 the serial number 14, 15, and 16 erroneously appear. This is due to copying and pasting from a different computer file without application of mind by computer personnel. Further. contention was that Annexures were prepared in computer and unintentional error has occurred. Returns being were manually prepared disclosing proper assessable value and duty was paid properly. This does not call for any adverse inference.

1.7 It is further contention of the learned Counsel that learned adjudicating authority appreciated that there is no prescription in law to debar sale of goods of different weight packs. Need of law is declaration of proper assessable value. Invoices were issued for properly value of packed goods. In absence of any material to suggest no disclosure of proper assessable value and weight, clerical error deserves consideration.

1.8 It was also submitted by learned Counsel that Authorities have never verified stock register of the company to allege discrepancy. Without looking to reason of clerical error in the Annexure to ER-1 return, to the Authority acted adversely against the appellant. Appellate authority also upheld the adjudication although clerical error was apparent from the face of the Annexure to the returns. While there is no incriminating material against appellant, clerical error should not cause prejudice to appellant since the error in column 1 of Annexure to the return of November, 2007 is testimony of computer error.

1.9 Further contention of the appellant was that there is no evidence of clandestine removal of the finished goods nor there is any material on record to show contumacious conduct of the appellant.

2. Learned Jt. CDR on other hand submits that adjudicating authority has examined entire pleading of the appellant. Appellant failed to explain how clerical mistake occurred. When the appellate authority did not find any acceptable explanation, order of adjudication was upheld. Discrepancies repeatedly occurred for two months. When return declares quantity and assessable value to be true, in case of discrepancy, the return cannot be true and correct. Mis-declaration goes against the appellant.

3. Heard both sides and perused the record.

4.1 Show cause notice appears to have taken into consideration trade practice of sale of goods through different schemes. When pleading in this regard came from the appellant as early as 20.2.2008, the Authority did not proceed to inquire about the veracity of the Claim of packing of pouches of different weight during different periods.. There was no examination done at all about the requirement of Section 4A of Notification by Authority below as to weight of the goods if any prescribed. The contents in the container whether was of declared quantity and of prescribed weight or not failed to be verified at any time in absence of any report in record. Buyers whose name appeared in the respective invoices of October and November, 2007 were not examined to ascertain weight of goods contained in the poly packs. Further, when the factory was closed on 14.11.2007 show cause notice was issued after 7 months.

4.2 Adjudicating authority has failed to ascertain from the invoices of the past as to weight of goods declared in respect of each pouch of impugned goods and whether weight of contents of poly pack had differences according to trade practice as claimed by Appellant and apparent from show cause notice. When the authorities failed to ask the buyers of the product as to the manner how the goods are being sold, traded and weight of pouches in the consignments of October and November, 2007, that remained in doubt.

4.3 Adjudicating authority made mention about a letter dated 25.9.2007 issued by the Asst. Commissioner, Division-iv, Ghaziabad describing norms of standard packing. But Appellate order did not look to that letter. A copy of such letter not being available in record it has also become impracticable to come to know the proposition in that letter.

4.4 Although extensive exercise in the case was made as may be appreciated from the previous paragraph, it has become a compulsion to remit the matter to the adjudicating authority to examine following issues:-

1) What is the weight of the goods in question normally packed in the pouches in respect of disputed brands of Gutkha need to be ascertained and taking that as a basis the contents and weight of goods in poly packs cleared for both months may be ascertained to arrive at a proper conclusion.

2) What was the requirement of contents of letter dated 25.9.2007 issued by the Asst. Commissioner needs to be brought to light in clear terms while the adjudicating authority was of the view that there is no restriction in varying the quantity in a poly bag. If the letter required any obligation to be discharged by the appellant to disclose weight of each poly pack that may be considered as a basis to arrive at the proper quantity of goods cleared in the poly pack of both the months.

3) Invoices are to be examined to ascertain whether those were issued in accordance with

law and most particularly according to norms of section 4A of Central Excise Act, 1944 and also according to norms of the letter dated 25.9.2007 referred to above disclosing quantity and number of poly packs if any to be disclosed since presence of clerical mistake is quite probable in view of nature of mistake pointed out by learned Counsel for appellant.

4) Stock record, if any exists needs to be verified to arrive at the quantity aspect of the clearance of the goods.

5) Notification prescribing the basis for determination of assessable value in respect disputed goods should be strictly examined and proper conclusion drawn.

4.5 Aforesaid guidelines are illustrative, but not exhaustive. However, learned Adjudicating Authority should not travel beyond the show cause notice and no foreign material should be used against the appellant for de novo adjudication. Following principle of natural justice, the adjudicating authority shall complete re-adjudication by end of December, 2011 since the matter is already four years old and the appellant has undergone suffering with the passage of time approaching different forums. Reasoned and speaking order is a necessity by thorough scrutiny of material on record and objective analysis of matter. In the result, the matter is remanded to adjudicating authority setting aside appellate order.

(D.N. PANDA)
JUDICIAL MEMBER

RK