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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/861 /2009,1087/2009 – SM[BR] Date 07/12/2010

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

To :
M/S S.K. SACKS PVT. LTD.
OUTSIDE CHATIWIND GATE, BEHIND BAJWA GAS SERVICE, TARAN TAARAN ROAD, AMRISTSAR.

M/S S.K. SACKS PVT. LTD. Appellant

Vs

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1365 – 1366 / 2010-SM[BR] dated 24.11.2010 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. JALLANDHAR(HQ. AT CHANDIGARH)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   NONE:------------------

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

8. M/S S.K.SACKS PVT. LTD.
AMRITSAR, O/S CHATTIWIND GATE, AMRITSAR.

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

Excise Appeal No. 1087 & 861 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 850/CE/APPL/JAL/2008 dated 23.12.2008 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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Excise Appeal No. 1087 of 2009-SM(BR)

M/s. S.K. Sacks Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Chandigarh — Respondent

Excise Appeal No. 861 of 2009-SM(BR)

Commissioner of Central Excise
Chandigarh — Appellants

Vs.

M/s. S.K. Sacks Pvt. Ltd. — Respondent

Appearance:

None for the Appellants
Shri K.P. Singh, SDR for the Respondent

Date of Hearing/decision : 24.11.2010

final **ORAL ORDER NO. 1365-1366/2010 SM(BR)**

Per M. Veeraiyan:

1.1 Appeal No. 1087 is by M/s. S.K. Sacks Pvt. Ltd. against the order of the Commissioner (Appeals) No. 850/CE/APPL/JAL/2008 dated 23.12.08 which itself was passed in remand proceedings in pursuance of Tribunal's final order No. 1470/07 SM (BR) dated 5.10.07.

1.2 Appeal No. 861/09 is by the department against the very same order seeking enhancement of penalty from Rs.60,000 to Rs.2,49,847/-.

2. None appears for M/s. S.K. Sacks Pvt. Ltd. However, there is a communication dated 19.11.10 seeking decision of the appeal on merits and on the basis of ~~cases~~ laws mentioned in the grounds of appeal.

3. The relevant facts, in brief, are as follows:

(a) There was a visit by the officers on 10.5.01 and they noticed shortage of 40,187 Kgs. of inputs namely, plastic granules on which credit has been taken. The party accepted the shortage of inputs and paid the credit involved amounting to Rs.3,34,356/- voluntarily. There is a separate set of proceedings relating to the said shortage of inputs noticed by the officers on 10.5.2001. These facts are also narrated as in to the present proceedings, certain submissions have been made based on the shortages noticed on 10.5.01.

(b) On 3.11.2001, the officers again visited the factory of M/s SKS Pvt. Ltd. and this time they found shortage of 32,249.4 Kgs of finished goods namely, plastic woven fabrics valued at Rs.14,51,223/- and 2298.3 Kgs. of plastic sacks valued at Rs.1,10,318/-.

(c) Shri Arvinder Pal Singh, Director of the company claimed that the shortage detected on 3.11.01 was attributable to what was earlier detected by the officers on 10.5.01.

(d) As the investigating officers felt that "this explanation of Shri Arvinder Pal Singh is not tenable", a show cause notice ~~dated~~ was issued proposing demand of duty of Rs.2,49,847/- along with interest and for imposition of penalty under Rule 25 of the Central Excise Rules, read with Section 11AC of the Central Excise Act. The party deposited a sum of Rs.1,50,000/- on 4.11.01 and further sum of Rs. One lakh on 5.6.03.

(e) The original authority vide order dated 28.3.04 confirmed the demand of duty as proposed in the show cause notice and imposed equal amount as penalty.

(f) Commissioner (Appeals), by the impugned order passed in de novo proceedings, upheld the demand of duty along with applicable interest as per the order of the adjudicating authority but reduced the penalty to Rs.60,000/-.

(g) The party is in appeal challenging upholding of the demand of duty and imposition of penalty of Rs. 60,000/-. The department is in appeal seeking enhancement of penalty to Rs.2,49,847/-.

4. In the grounds of appeal, the party submits that duty is payable only on removal of goods under Rule 4 of Central Excise Rules, 2002 and that Commissioner (Appeals) erred in holding that the demand of duty on account of shortage made by the adjudicating authority is justified. It was also contended that the Commissioner (Appeals) erred in sustaining penalty of Rs. 60,000/-. The party has relied on the decision of the Tribunal in the case of Neutral Glass and Allied Industries Ltd. vs. CCE, Surat reported in 2009 (235) ELT 337 (Tri-Ahm) and in the case of Sun Pharmaceutical Industries Ltd. vs. CCE, Daman reported in 2009 (234) ELT 666 (Tri-Ahmd) and in the case of Ganga Kisan Sahkari Chini Mills vs. CCE Meerut reported in 2009 (233) ELT 136 (Tri-Del) in support of their submissions in the grounds of appeal.

5. Learned SDR, reiterating the grounds of appeal, submits that it is a clear case where section 11AC should be invoked and there was no justification in reducing the penalty to Rs.60,000/-. He also submits that the party is a habitual offender and deserves no leniency. He submits that the shortage of inputs on 10.5.01 has no bearing on the shortage of finished goods ~~admitted~~ noticed on 3.11.01.

6. I have carefully considered the submissions from both sides. When the officers visited, on 10.5.01, the premises of the factory, a huge shortage of 40,187 Kgs of granules which are inputs has been noticed. The shortage

was not explained and the duty involved stands paid. Apparently there are separate proceedings relating to shortage of inputs noticed on 10.5.01. On 3.11.01 when the officers visited the factory again, this time, for a change, they noticed shortage of finished goods. The director of the Company made a feeble attempt to link the goods found short on 10.5.01 to the shortage of finished goods found on 3.11.01. The investigating officers however, did not deem it necessary to continue further investigation, perhaps as duty of Rs.1,50,000/- was paid on 4.11.01 towards duty liability on finished gods found short. Without further investigation, a cryptic, show cause notice has been issued of course, invoking the provisions of section 11AC as well. The party has chosen to pay a further amount of Rs.1 lakh ~~for~~ on 5.6.03. In other words, before the adjudication by the original authority, entire amount of duty involved on short found finished goods stands paid. I do not find any justification whatsoever to link the shortage of finished goods found on 3.11.01 with the shortage of inputs found on 10.5.01. Shortage of inputs can explain excess of finished goods. Shortage of inputs cannot explain shortage of finished goods. Having said that, I notice that there is no evidence relied upon by the department to substantiate that the goods short found by the department were clandestinely removed. The manufacturer's obligation to account for the goods manufactured is a strict obligation, failure to do so clearly attracts the provisions of Rule 25(1) (b) of Central Excise Rules, 2002. Thus it is a clear case of non-accounted shortage and penalty is warranted under Rule 25(1)(b). However, no evidence has been relied upon by the department justifying invokation of provisions of section 11AC. In view of the above, upholding of demand and interest ordered by the original authority by the Commissioner (Appeals) is justified. The challenge of the party seeking setting aside the demand of duty and interest does not deserves to be accepted. Having held that it is not a case for invoking the provisions of section 11AC, sustaining the imposition of penalty up to Rs.60,000/- as ordered by the Commissioner (Appeals) is justified in the facts and circumstances of the case. The challenge of the party for setting aside the penalty does not deserve acceptance. At the same time, the prayer of the department seeking enhancement of penalty also does not deserve to be accepted.

7. In view of the above, the impugned order of the Commissioner (Appeals) is upheld. Appeal of the party as well as appeal by the department against the impugned order are rejected.

(M. Veeraiyan)
Member(Technical)

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