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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/278 /2009,299 /2009 – SM[BR] Date 14/12/2010

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

To :
M/S DHARAMPAL SATYAPAL LTD.
B-1, SECTOR-3, NOIDA (U.P.)

M/S DHARAMPAL SATYAPAL LTD. Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1400 – 1401 / 2010-SM[BR] dated 19.11.2010 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. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
   MR. T.R.RUSTAGI,ADVOCATE
   SD-84, TOWER APARTMENTS, PITAMPURA, DELHI-34

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)

2. M/S DHARAMPAL SATYAPAL LTD.
B-1, SECTOR-3, NOIDA.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Single Member Bench

Excise Appeal No.299 of 2009-SM
(Arising out of Order-in-Appeal No.128/CE/APPL/NOIDA/2008 dated 31.10.2008 passed by the CCE(A), Noida)

Date of Hearing/Decision: 19.11.2010

For approval and signature:
Hon'ble Mr.M.Veeraiyan Member (Technical)

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

M/s.Dharampal Satyapal Ltd. Appellant

Vs.

CCE, Noida Respondent

Present for the Appellant : Shri T.R.Rastogi, Advocate
Present for the Respondent: Shri Anil Khanna, DR

And
Excise Appeal No.278 of 2009-SM

CCE, Noida Appellant

Vs.

M/s. Dharampal Satyapal Ltd. Respondent

Present for the Appellant : Shri Anil Khannal, DR
Present for the Respondent: Shri T.R.Rastogi, Advocate

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

Final **ORDER No.** 1400-1401/2010 SM(BR)

PER: M.VEERAIYAN

The appeal No.E/299/09 is filed by M/s.Dharampal Satyapal Ltd. against the order of the Commissioner (Appeals)

No.128/CE/APPL/NOIDA/2008 dated 31.10.2008. The appeal No.E/278/09 is against the very same impugned order field by the department seeking enhancement of the penalty to the level determined by the original authority.

2. Heard both sides.

3. The relevant facts of the case, in brief, are that the appellant company (hereinafter referred to as appellant) is a manufacturer of Pan Masala containing tobacco (gutkha), Pan Masala (sada), and Rajni Scented Supari. The appellant brought different raw material and also procured duty paid laminated films. The laminated films were converted into pouches for packing the processed products like pan masala, scented supari etc. The appellant availed credit of duty paid on laminated films which were used in the manufacture of pouches which were ultimately used for packing final products namely scented supari. In the present case, some quantity of supari cleared by them on payment of duty was returned back under Rule 16 of Central Excise Rules, 2002 for the purpose of re-processing. On receipt of the said supari, the appellant have taken credit of duty originally paid by them when they cleared the said supari. A show cause notice dated 28.12.06 was issued alleging that while re-processing of the supari, the original packing got destroyed and that the credit on the inputs attributable to such packing materials required to be reversed. Accordingly, show cause notice was issued demanding Rs.2,30,898/- relating to the period October, 2003 to December, 2004. The original authority confirmed the demand and imposed equal amount as penalty. The Commissioner (Appeals) has upheld the demand of duty but reduced the penalty from Rs.2,30,898/- to Rs.58,000/-. The appellant is challenging

confirmation of duty and penalty sustained as indicated above. The department is in appeal seeking enhancement of the penalty from Rs.58,000/- to Rs.2,30,898/-.

4. Learned Advocate for the appellants submits that duty paid on the laminated films on which credit was taken has been utilized for the intended purposes i.e. for making pouches and the said pouches have been used for packing the supari. At the time of clearance of supari, the applicable duty has been paid on supari on a value which included the value of packing material. At the time of clearance of supari, the packing materials, namely, pouches are not considered as a separate product. Some small quantities of supari in pouches were returned back as they were required to be used best before six months but the said time limit expired. On receipt of the said supari for re-processing, naturally pouches were cut open and supari was processed and cleared on payment of applicable rate of duty as supari. The goods returned back under Rule 16 are scented supari and there was no justification for bifurcating what was received by the appellant as two distinct products namely "supari" and "pouches" and to contend that the pouches were not re-processed. The demand of duty proposed on quantities which have gone into such pouches is not warranted.

5. Learned SDR reiterates the findings and reasoning of the Commissioner, in so far as the same relates to the merits of the case. He also seeks restoration of the penalty equal to duty as imposed by the original authority.

6. I have carefully considered the submissions made from both sides and perused the records. The laminated films on whch credit

has been taken has been converted into pouches and the pouches have been used for packing the final products namely, supari. When the supari is cleared, the identity of the packing material is lost. What was cleared by the appellant to the market was only supari and the same should not be viewed as consisting of two distinct products , "supari" and "pouches". Any contrary view is neither legal nor advisable in practice. The demand, obviously has arisen only because the appellant have brought back the sold quantity of supari. There is no justification for bifurcating or trifurcating of the goods which have been received under Rule 16. The show cause notice not only proposed for bifurcating the received goods as supari and ~~namely~~, "pouches" but proceeded to identify and quantify laminated films out of such pouches have emerged. Such an action is not at all justified. The question of demanding duty invoking Rule 14 of Cenvat Credit Rules does not arise. It is not the case of the department that the appellant had wrongly taken credit on the laminated films which were used for the manufacture of pouches which were used for packing supari. There was no irregular utilization of the credit inasmuch as the same was used for paying duty on supari. Merely because some quantity of supari in pouches has been returned back under Rule 16, to say that the credit taken on laminated films at earlier stages is irregular in terms of Rule 14 is not warranted. I do not find any justification for confirming the demand of duty. Therefore, the appeal of the appellant party deserves to be allowed. When the appeal of the party is allowed, the question of enhancement of penalty equal to duty confirmed by the Commissioner (Appeals) does not arise. Since the appeals are disposed of on merits, the issue of limitation raised on behalf of the appellant is not being gone into.

7. The appeal of appellant is allowed with consequential relief. The appeal of the department is rejected.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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