

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/848 /2009 – SM[BR]

Date 20/12/2010

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

To :
C.C.E. MEERUT I

EXCISE CHOWK, OPPOSITE CHOUDHARY CHARAN
SINGH UNIVERSITY MANGAL PANDAY NAGAR,
MEERUT - 250005.

C.C.E. MEERUT I

Appellant

Vs
Respondent

M/S SARDHANA PAPERS PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order No. 1443 / 2010-SM[BR]** dated 26.10.2010
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 SARDHANA PAPERS PVT. LTD.

MEERUT ROAD, SARDHANA, DISTRICT-MEERUT (U.P.)

2. Adv. / Consult SHRI RAJESH CHHIBBER ADV.
FA-9, NEW KAVI NAGAR GHAZIBAD

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

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 (Harvana)

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.848 of 2009

(Arising out of Order-in-Appeal No.15-CE/MRT-I/09 dated
30.01.09 passed by the CCE (A), Meerut-I)

Date of Hearing: 26.10.2010

Date of Decision: 26.10.2010

For approval and signature:

Hon'ble Mr.Ashok Jindal, Member (Judicial)

1	Whether Press Reporters 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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

CCE, Meerut-I

Appellant

Vs.

M/s.Sardhana Papers Ltd.

Respondent

Present for the Appellant: Shri Anil Khanna, SDR

Present for the Respondent: Shri Rajesh Chhibber, Advocate

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final ORDER NO. 1443 / 2010 SM *(B2)*

PER: ASHOK JINDAL

The Revenue has filed this appeal against the impugned order dropping the demand on finished goods by the lower appellate authority.

2. The facts of the case are that during the visit of the preventive officers of the factory of the respondents on 25.02.2008, the shortages of inputs and finished goods were

found. The authorised representative available in the factory admitted the shortages and paid duty accordingly. Thereafter a show cause notice was issued for appropriation of duty and imposition of penalty. In reply to the show cause notice, the respondents explained the shortages of the finished goods by supporting evidence that they have issued two invoices on the date of visit on 25.2.2008 and the goods under those invoices could not be entered in the statutory records, the shortages were found. The lower appellate authority confirmed the shortage on the inputs but dropped the demand on the shortage of finished goods.

3. Learned DR reiterated the adjudication order and further submitted that during the course of investigation, the respondent has admitted the shortages. Hence, there is nothing to prove beyond that as admitted by the authorized representative that there is shortage in the finished goods. In support of his contention, he places reliance on the decision of this Tribunal in the case of CCE, Ahmedabad-I vs. Gopal Textile Mills Pvt.Ltd. reported in 2007 (215) ELT 588 (Tri.Ahmd) wherein this Tribunal has held that admitted facts need not be corroborated or proved.

4. On the other hand, learned Advocate for the respondent reiterated the impugned order.

5. Heard both sides and considered the submissions.

6. It is no doubt that during the visit on 25.2.2008, the investigating team found shortage of inputs and finished goods which the authorised representative was failed to explain on that

day. Later on the respondent explained that there is shortage of finished goods and in their reply to the show cause notice, they have explained how the shortages occurred that they have issued two invoices on the date which could not be entered in the statutory records. The adjudicating authority did not consider the submissions of the respondent saying that this defence is only after thought. I have gone through the impugned order ^{and} wherein the lower appellate authority has examined the issue ^{and} observed as under:

"As regards shortage of finished goods (Kraft Paper), I find the relevant column in Annexure-I to the panchnama showing the clearances on 25.2.2008 actually had an entry of 24.421 MT regarding the removal of finished goods on 25.2.2008 relating to invoice No.1052 and 1053. This entry itself is a pointer to the fact that there were clearances on 25.02.2008 and the proceedings in the premises concede this fact. The officers did not mention in the panchnama that the clearances were stopped by them or by the factory or that there were no more clearances. The officers neither mentioned the number of last invoice issued in the panchnama nor signed on the last invoice issued and that leaves much room for doubt. In view of this fact, the invoices issued by the Appellants as adduced cannot be summarily discarded as an after thought. I concede to the submissions of the Appellants that the clandestine removal should be proved with tangible, cogent and corroborative evidence which are significantly absent in this case. As the evidence in the form of invoices cannot be summarily discarded, it was incumbent upon the Adjudicating authority to cause

enquiries regarding dispatches under these invoices from the consignee, drivers, transporters, check posts, entries in the factory/godown of receipt etc. to disprove the dispatches claimed under these invoices. However, verification/checking was not done before arriving at the conclusion. It is a judicially acknowledged fact that the benefit of doubt should invariably go to the assessee when no contradictory evidence is produced, and I, therefore, have no alternative but to give benefit of doubt to the appellants. I accordingly set aside the demand of Rs.87,237/- (including cesses) alongwith penalty of Rs.87,237/- related to finished goods."

7. I find that the lower appellate authority has dealt with the issue in detail and I have also in agreement with the finding of the lower appellate authority. Accordingly, I do not find any reason to interfere with the impugned order and the same is upheld. The appeal filed by the revenue is rejected.

(Pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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