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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/787 /2008-788 /2008 – SM[BR] Date 29/01/2010

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant

Vs

M/S AUORA FOAM PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 161 – 162 / 2010 –SM[BR] dated 21.1.2010 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 AUORA FOAM PVT. LTD.
   SH. DINESH GODIYAL, DEPUTY MANAGER.
   RAJPURA,DISTT. PATIALA (PB)

2. Adv. / Consult SHRI PRAVIN SHARMA
   KF-84, KAVI NAGAR,
   GHAZIABAD

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 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 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. 787-788 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 47-48/CE/CHD/2008 dated 18.1.2008 passed by Commissioner of Central Excise (Appeals), Chandigarh]

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

Commissioner of Central Excise
Chandigarh — Appellants

Vs.

M/s. Auora Foam (P) Ltd.
Dinesh Godiyal, Dy. Manager — Respondent

Appearance:

Shri V.K. Saxsena, Jt.CDR for the Appellants
Shri Pravin Sharma for the Respondent

Date of Hearing/decision : 21.1.2010

ORAL ORDER NO. 161 – 162/2010 SM(BR)

Per M. Veeraiyan:

These two appeals by the Department are against the order of the Commissioner (Appeals) No. 47-48/CE/CHD/2008 dated 18.1.08.

2. Heard both sides.

3. When the officers visited the factory premises of the respondent company on 10.3.07 and conducted stock verification, the stock of finished goods was found tallied with the recorded balance. However, the stock recorded of raw materials namely, Flexi PU foam sheets/ blocks was 14,102.11 Kgs. whereas the actual stock was 16,421 Kg. thus excess stock of 2318.89 Kgs. valued at Rs.2,78,267/- involving Cenvat credit of Rs.45,859/- was found and the same was seized. Show cause notice dated 9.7.07 was issued and the original authority after holding that unaccounted raw materials were kept for the purpose of manufacture of excisable goods without bringing into account and for removing clandestinely, confiscated the excess found raw materials under Rule 25 of the Central Excise Rules, 2002 but allowed the same to be redeemed on payment of fine of Rs. 55,000/-. He also imposed penalty of Rs.45,000/- on the respondent company and Rs.45,000/- on Shri Dinesh Godiyal, Deputy Manager of the respondent company. Commissioner (Appeals) held that inputs could not be confiscated under Rule 25 of the Central Excise Rules, 2002 and accordingly, set aside the order of the original authority.

4. Learned Jt. CDR after narrating the facts as above refers to the grounds of appeal and submits that the respondent have failed to account

inputs and the said inputs are also excisable goods manufactured by the supplier of the said inputs in terms of section 2(d) of the Central Excise Act, 1944. As the excisable goods were stored in the premises of the respondent, Rule 25(b) of the Central Excise Rules, 2002 shall be applicable and therefore, the said inputs are liable for confiscation. He seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of original authority.

5. Learned Advocate for the respondents submits that as noted in the show cause notice, there was no discrepancy in the stock of finished goods; the excess of raw material noted was due to mistake in weighment; at any rate there is no allegation in the show cause notice that they have taken any excess credit; the allegation that the inputs were kept unaccounted with a view to manufacture excisable goods meant for clandestine removal is purely on assumption. The terms excisable goods under Rule 25 of the Central Excise Rules cannot cover the inputs procured by the manufacturer. In the absence of any allegation of wrong taking of credit on the said inputs, provisions related to confiscation of cenvated inputs under Cenvat Credit Rules also do not apply. At the most, it can be a case of irregular maintenance of raw material account. He seeks upholding the order of Commissioner (Appeals). He also submits that it has been held by the Tribunal in the case of JJ Packagers (P) Ltd. reported in [2006 (196) ELT 381] that Rule 25 of the Central Excise Rules could not be invoked in respect of raw materials. He also refers to the decision of the Tribunal in the case of CCE Indore vs. Avanti LPG India Ltd. reported in [2004 (166) ELT

186 (Tri-Del)] wherein it has been held that raw material procured by a manufacturer cannot be treated as excisable goods in terms of section 2(d) of the Central Excise Act, 1944.

6. I have carefully considered the submissions from both sides. The show cause notice in para 2 refers to only excess of raw materials. However, in para 4 the allegation expands to cover non-accountal excess stock of inputs / semi finished goods in the records. The allegation in the show cause notice that the inputs were kept for the purpose of manufacturing goods without bringing into account and clandestinely removing the same is in the nature of presumption and is not supported by any corroborative evidence including circumstantial evidence like any clandestine removal in the past etc. Therefore, the finding of the original authority in this regard cannot be sustained. However, it is not disputed that there was excess stock of inputs and therefore, improper maintenance of accounts is clearly established. The dispute about the manner of stock taking has been raised belatedly and does not deserve any consideration. Further, the excess was substantial in quantitative terms and in percentage terms. In the absence of allegation of Cenvat Credit having been taken, the violation has to be treated only as a technical violation. The finding of the Commissioner (Appeals) that Rule 25 of the Central Excise Rules, 2002 cannot be applied to inputs brought by the manufacturer of final products cannot be found fault with as such view is supported by the decision of the Tribunal in the cases of Avanti LPG and JJ Packagers (P) Ltd. cited (supra).

7. In view of the above, the appeals by the Department are disposed of in the following terms:-

a) The order setting aside the order of confiscation by the Commissioner (Appeals) is set aside and the order of original authority, in this regard is restored; however, while restoring the order of the original authority the redemption fine is reduced from Rs.55,000/- to Rs. 10,000/- (Rupees Ten thousands only)

b) The order of the Commissioner (Appeals) in setting aside the penalty on the respondent company is set aside and the order of original authority, in this regard is restored; however, while restoring the order of the original authority, the penalty is modified as penalty under Rule 27 and reduced to Rs.5,000/- (Rupees Five thousands only).

c) The order of the Commissioner (Appeals) in setting aside the penalty on Shri Dinesh Godiyal is upheld as no specific ground have been relied upon for imposing the penalty on Shri Dinesh Godiyal.

(M. Veeraiyan)
Member(Technical)

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