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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/233 /2008 – SM[BR]   Date 15/02/2010

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW   Appellant
Vs
M/S SHYAM TRADERS   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 212 / 2010 –SM[BR] Dated 3.2.2010 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 SHYAM TRADERS
   KUNDARI, RAKAB GANJ,LUCKNOW.(U.P.)
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI
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. 233 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 153-CE/LKO/2007 dated 31.10.2007 passed by Commissioner (Appeals), Central Excise & Service Tax, Lucknow]

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
Lucknow — Appellants

Vs.

M/s. Shyam Traders — Respondent

Appearance:

Shri S.K. Bhaskar, DR for the Appellants
Shri Manish Saharan for the Respondent

Date of Hearing/decision : 3.2.2010

Final **ORAL ORDER NO. 212/2010, SM-(BR)**

Per M. Veeraiyan:

This is a departmental appeal against the order of the Commissioner (Appeals) No. 153-CE/LKO/2007 dated 31.10.07.

2. Heard both sides.

3. On 4.12.04 a consignment of 60 bags of Shyam Bahar Gutkha valued at Rs.2,70,000/- was intercepted while being transported from Lucknow to Gorakhpur by Trade Tax Authority. The consignment was accompanied by only three invoices and three GRs covering totally 30 bags. Original authority confiscated the Gutkha in 60 bags valued at Rs.2,70,000/- and imposed Redemption Fine of Rs.70,000/-; confirmed the duty demand of Rs.1,65,240/- and imposed equal amount of penalty under Rule 25. Commissioner (Appeals) taking note of the fact that as per panchnama 30 bags of Gutkha covered by Central Excise documents, reduced the Redemption fine, demand of duty and penalty to half of what was imposed by the original authority.

4. Learned DR reiterates the grounds of appeal and seeks setting aside of the order of the Commissioner (Appeals) and restoration of the order of original authority.

5. Learned Advocate for the respondent strongly supports the decision of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. It is a case of transportation of 60 bags of 'gutkha' while the Central Excise documents were only for 30 bags. The submissions on behalf of the

Department that entire Gutkha in 60 bags should be treated as non-duty paid is clearly unacceptable especially in the absence of any evidence in that regard. The evidence only shows transport in excess of the document. Under these circumstances, the Commissioner relying on the documents referred in the panchnama and coming to the conclusion that 50% of the goods seized were covered by the Central Excise documents and hence duty paid cannot be considered erroneous. Therefore, his order reducing the redemption fine, duty and penalty proportionately calls for no interference.

7. The appeal is rejected.

(M. Veeraiyan)
Member(Technical)

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