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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/1703 - 1704/2008 – SM[BR] Date 09/09/2010

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

1. M/S K.A.FORWARD SHOE FACTORY,
2. SHRI. DHARMENDRA KUMAR AUTH. SIGNATORY.
1/12, PACHKUIYAN ROAD, AGRA.

M/S K.A.FORWARD SHOE FACTORY, Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 964 – 965 / 2010-SM[BR] dated 25.8.2010 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. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
SHRI K.K.ANAND ADV.
A-5, BASMENT LAJPAT NAGAR-III,NEW DELHI-24.
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Appeal No. 1703 of 2008 (SM)

M/s K.A. Forward Shoe Factory	Appellant
Versus	
CCE, Kanpur	Respondent

Excise Appeal No. 1704 of 2008 (SM)

Sh. Dharmendra Kumar, Auth. Signatory of] M/s K.A. Forward Shoe Factory]	Appellant
Versus	
CCE, Kanpur	Respondent

[Arising out of the Order-in-Appeal No. 385-386-CE/APPL/ KNP/2007 dated 28/12/2007 passed by The Commissioner (Appeal), Central Excise, Kanpur.]

For Approval and signature :

Hon'ble Shri Rakesh Kumar, 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?	:
2.	Whether it would 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 Department Authorities?	:

Appearance

Shri Saurav Yadav, Advocate – for the appellant.

Shri R.K. Gupta, Authorized Representative (DR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 25/08/2010.

Final Order No. 964 - 965 /2010 SM (BR) Dated : ____________

Per. Rakesh Kumar :-

The appellant company are engaged in the manufacture of shoes chargeable to Central Excise Duty. They were also availing the Cenvat credit of duty paid on inputs used in the manufacture of finished products. The shoes being manufactured were being cleared to M/s Bata India Ltd. On 5/12/05, the appellant's factory was visited by the Jurisdictional Central Excise officers, in course of which stock of the finished goods and cenvated inputs was checked. As regards the finished products, as against RG-1 balance of 162 pairs of Hush Puppies' brands of footwear, 699 pairs were found and thus 537 pairs of footwear of 'Hush Puppies' brand valued at Rs. 5,47,418/- were in excess of the balance in the RG-1 register. The same were therefore placed under seizure. As regards the stock of the cenvated inputs, shortage of 9,080 litres of Adhesive Glue and 11,411 pairs of Soles involving Cenvat credit of Rs. 3,29,192/- was found. At that time, inquiry was made with Shri Dharmendra Kumar, Authorized Signatory, with regard to the excess of the stock of the finished goods and shortage of cenvated inputs and he accepted the same and as such he could not given any explanation for the shortage of the cenvated inputs. On 5/1/06, the duty of Rs. 3,29,192/- was paid. Subsequently a show cause notice dated 30/11/2006 was issued to the appellant company as well as to Shri Dharmendra Kumar for–

(a) demand of Central Excise Duty amounting to Rs. 3,29,192/- in respect of shortage of the cenvated inputs alongwith interest,

(b) imposition of penalty on the appellant company under Section 11AC of the Central Excise Act, 1944; and

(c) imposition of penalty on Shri Dharmendra Kumar, Authorized Signatory, of the appellant company under Rule 26 of the Central Excise Rules, 2002.

- As regards, the seizure of 537 pairs of finished footwear, a separate show cause notice dated 31/5/06 was issued for their confiscation which is not the subject matter from this appeal.

1.1 The show cause notice was adjudicated by the Assistant Commissioner vide order-in-original No. 67-AC/Adj./2007 dated 3/9/07 by which –

(a) the duty demand of Rs. 3,29,192/- was confirmed against the appellant company alongwith interest and an amount of Rs. 3,29,192/- already paid was appropriated towards this demand ;

(b) penalty of Rs. 3,29,192/- was imposed on the appellant under Section 11AC of the Central Excise Act readwith Rule 25 ; and

(c) penalty of Rs. 10,000/- was imposed on Shri Dharmendra Kumar under Rule 26 of Central Excise Rules, 2002.

1.2 On appeals being filed by the appellant company as well as Shri Dharmendra Kumar against the Assistant Commissioner's order, the Commissioner (Appeals) vide the impugned order-in-appeal dated 5/11/07 upheld the Assistant Commissioner's order and dismissed the appeal.

1.3 It is against this order of the Commissioner (Appeals) that the present appeals have been filed by the appellant company as well as by Shri Dharmendra Kumar. In both the appeals, it is only the imposition of penalty, which has been challenged.

2. Heard both the sides.

2.1 Heard Shri Saurav Yadav, Advocate, the learned Counsel for the appellants, pleaded that this is not a case of clandestine removal, that the appellants in their reply to the show cause notice and in course of hearing before the Commissioner (Appeals) as well as before the adjudicating authority had pleaded that the adhesive and the soles found short had been removed from the store room for the reason that their quality had deteriorated and they had become unusable, that this plea was not accepted by the Commissioner (Appeals), that in absence of any evidence, it cannot be concluded that the cenvated input found short has been clandestinely removed without payment of duty and that in any case there is no justification for imposition of penalty on Shri Dharmendra Kumar, who was only an employee and there was no evidence that he was involved in alleged clandestine removal. He also pleaded that on the date of the officer's visit the concerned Manager incharge of the raw material was on leave. In view of this, he pleaded that there is no justification for upholding of the penalties on the appellant company and on Shri Dharmendra Kumar.

2.2 Shri R.K. Gupta, the learned Departmental Representative, defending the impugned order, pleaded that the shortage of the soles and adhesive in respect of which Cenvat credit has been taken, is huge, that no explanation was given for the shortage, that the plea that the soles and adhesive found short had been removed from the store room as their quality had deteriorated, has been made after about 7 months from the date of officer's visit, ~~while~~ which as discussed in the Commissioner (Appeals)'s order is only an after thought, that as rightly pointed out by the Commissioner (Appeals), even if Shri Dharmendra Kumar could not explain the shortage for the reason that the Manager incharge of materials was on leave, if the shortage was genuinely due to removal of these raw material from the store room and their storage at some other place in the factory, same could have been pointed out to the officers immediately after the Manager came back from leave and that in view of this, the shortage can only be attributable to clandestine removal and, hence, penalty has been rightly imposed.

3. I have carefully considered the submission from both the sides and perused the records. The shortage of cenvated inputs – 9,080 litres adhesive and 11,411 pairs of footwear is huge for which at the time of the officer's visit to the factory, no explanation was given by Shri Dharmendra Kumar or anybody else. Even if on the date of the officer's visit, the material manager was on leave, when he came back from leave, the reason for the shortage, could have been explained, but on the contrary, the appellant accepting the shortage paid the duty involved on the inputs found short. In fact in this appeal, the duty demand in respect of the shortage of the cenvated inputs has not even been challenged. In view of this,

the appellant's plea that the shortage was not due to clandestine removal cannot be accepted. I, therefore, do not find any infirmity in the impugned order. The appeals are, therefore, dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK