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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

Date 22/09/2010

Appeal No. E/1915/2008 – SM[BR]

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

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

C.C.E. LUCKNOW Vs
Respondent
M/S RAKO AGROCHEM (P) LTD.,

I am directed to transmit herewith a certified copy of **Final order No**. 1002 /2010- **SM[BR]** dated 10.9.2010 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 RAKO AGROCHEM (P) LTD.,
   UPSIDC, INDUSTRIAL AREA, DEVA ROAD, CHINHAT, LUCKNOW (U.P.)
2. Adv. / Consult SHRI T.K.SRIVASTAVA ADV.
   311, MURLI BHAWAN, 10-A, ASHOK MARG.
   LUCKNOW [U.P]

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 (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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No. 1915 of 2008-SM (BR)

[Arising out of Order-in-Appeal No. 67-CE/LKO/08 dated 28.05.2008 passed by the Commissioner (Appeals) Central Excise & Service Tax, Lucknow]

Date of Hearing/ Decision: 10.09.2010

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

CCE, Lucknow ...Appellant

Vs.

M/s Rako agrochem (P) Limited ....Respondent

Appearance: Shri S.K. Bhaskar, DR appeared for the appellant.
Shri T.K. Srivastava, Advocate appeared for the respondent.

CORAM: **Hon'ble M. Veeraiyan, Member (Technical)**

Final Oral Order No. 1002/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal by the department against the order of the Commissioner (Appeals) No. 67-CE/LKO/08 dated 28.05.2008.

2. Heard both sides.

3. The respondents is a manufacturer of insecticides, weedicides and fungicides. They have received back various part consignments of duty paid goods from the depots as well as from the buyers under Rule 16 of the Central Excise Rules, 2002 and taken credit. The respondents claimed that they reprocessed the goods and the reprocessed goods have been cleared on payment of duty. The original authority had serious reservation about the claim about reprocessing of the goods and, therefore, denied the benefit under Rule 16 and ordered recovery of Rs. 3,63,247/- alongwith interest and imposed equal amount as penalty. Commissioner (Appeals) set-aside the order of the original authority.

4. Learned DR reiterates the grounds of appeal. He submits that the claim by the party was ambiguous; that they have not revealed the actual reprocessing undertaken by them; that they have not produced supporting technical literature to substantiate their claims that these goods have undergone reprocessing and on such reprocessing, some goods of fresh life emerged. Learned DR submits that no time expired goods can be received back for reprocessing under Rule 16 as held by the Tribunal in the case of **U.S. Foods Pvt. Limited vs. Commissioner of Central Excise, Meerut-I** reported in 2009 (236) ELT 719 (Tri. Del.).

5. Learned Advocate for the respondents supports the order of the Commissioner (Appeals). A small portion of goods which could not be sold are brought back and taken on their records and credit was taken as provided under Rule 16. The received goods were tested on various parameters and accordingly they are used for reprocessing by mixing with fresh goods under manufacture.

6. I have carefully considered the submissions from both sides and perused the records.

7. A perusal of Rule 16 do not indicate an obligation to file intimation about the arrival of the goods for the purpose of taking credit. The assesse was working under self removal procedure and had liberty to receive not only inputs under Cenvat Credit Rules but also goods cleared on payment of duty earlier from their factory premises or cleared from other factories and to take credit as if such goods are inputs subject to the condition mentioned therein.

8. In the present case, there is no dispute that the respondents have brought the goods from the depots and from the dealer's premises and the said goods have earlier suffered duty. It is not the case of the department that the respondents received time expired insecticides, pesticides etc. The finding of the original authority that they received just before expiry of the life period is misleading. The original authority has held as follows:-

> "The party's claim is ambiguous and does not seem to be acceptable in that as per the contention it appears that the party reprocesses only when the goods are found substandard on testing. That raises another question, what happens to the goods which on testing are not found substandard. Further, what is the criteria for despatch of such goods which are not found substandard. The criteria for taking the goods back for reprocessing has not been clarified by the party. The party has not offered any technical literature to support their claim that

expiry date can be extended. It is hard to accept that the expiry date can be extended just by mixing the old goods in the new goods as has been claimed by the party".

9. The questions raised by the original authority have a bearing on the quality of final products which may emerge after reprocessing. These are issues to be taken into account by the manufacturer. The department cannot determine the manner of reprocessing. If the respondent is in the habit of reprocessing huge quantity of material and supplying poor quality of final product, they are bound to suffer in their business in the long run. The reasoning adopted by the Commissioner (Appeals) in holding that the respondents are eligible for the credit under Rule 16 are well founded. Further, there is a clear finding by the Commissioner (Appeals) that the party has produced before him records during the course of final hearing, and he has ~~revised~~ verified entries in the RG-1 register and materials issue slips indicating that all the goods which were received back due to shell life nearing expiry were duly issued for reprocessing. This finding of the Commissioner (Appeals) has not been refuted by furnishing any materials in the grounds of appeal.

10. In view of the above, appeal by the department is, rejected.

(M. Veeraiyan)
Member (Technical)

Pant