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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/62 /2009 – SM[BR] Date 24/09/2010

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S STANDARD SURFACTANTS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1038 / 2010-SM[BR] dated 17.9.2010 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 STANDARD SURFACTANTS LTD.
   VILLAGE-UMARAN, RANIA, KANPUR-DEHAT.
2. Adv. / Consult MS. REENU GUPTA ADV.
   1058, SECTOR -3, R.K.PURAM
   NEW DELHI-22.

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:17.9.2010

Central Excise Appeal No.62 of 2009-SM

Arising out of the order in appeal No.360-CE/APPL/KNP/2008 dated 30.9.08 passed by the Commissioner (Appeals) , Customs & Central Excise, Kanpur.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter 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 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

C.C. & C.Ex., Kanpur ... Appellant

Vs.

M/s Standard Surfactants Ltd. ... Respondent

Shri Anil Khanna, Authorized Departmental Representative (SDR) for the Revenue and Ms. Reenu Gupta, Advocate for the respondents.

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Final Order No. 1038/2010 SM (Br)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 360-CE/APPL/KNP/2008 dated 30.9.08.

2. Heard both sides.

3. The relevant facts, in brief, are that the officers visited the premises of the respondents who are manufactures of detergent cakes and detergent powder. The officers found different quantities of detergent cakes of various

brands packed in carton boxes bearing the names of M/s Sadhvi Gramudyog Samity and M/s Manoj Kumar Gupta & Co. in addition to the goods with the brand name of the respondents. In fact, the officers found 5,436 cartons of unaccounted stock of detergent cakes totally valued Rs.17,43,788/-. Out of these, 5,367 cartons were bearing the brand name of other two parties who were undisputedly eligible for clearance of the goods either at nil rate of duty or concessional rate of duty. The original authority held that the respondents had kept the goods unaccounted for in the records with intent to be cleared without payment of duty and that the party would have succeeded in doing so had the officers not visited the factory of the party. He accordingly, confiscated the goods but allowed the same to be redeemed on payment of fine of Rs.4,50,000/-. He also imposed penalty of Rs.25,000/- on the respondents under Rule 25 of the Central Excise Rules, 2002.

4. Learned SDR submits that the claim of the respondents that the packing materials were supplied by mistake to their factory instead of being supplied to the other two manufacturing units is clearly erroneous. There was huge stock of goods manufactured with the brand name of others and the same were not accounted. He also submits that non-accountal of the manufactured goods renders the goods liable for confiscation and penalty also requires to be imposed. Therefore, the order of the Commissioner (Appeals) setting aside the order of the confiscation is not justified. He also submits that there is no warrant for reducing penalty from Rs.25,000/- to Rs.5,000/-.

5. Learned Advocate for the respondents strongly supports the order of the Commissioner (Appeals). She submits that it was a mistaken supply of the packing materials meant for other two units and it was wrong receipt by their illiterate labourers who have used them for packing final products. There is no dispute that the goods found in 5,436 cartons were manufactured by the respondents and it would have been entered in the statutory records and would have been cleared only on payment of appropriate duty. Therefore, the presumption of the original authority that

the goods were meant to be removed clandestinely was not warranted. Relying on the decision of the Hon'ble High Court of Punjab & Haryana in the case of C.C.E., Chandigarh vs. Sadashiv Ispat Ltd. reported in 2010 (255) ELT 349, she submits that even if the goods have not been entered in RG-1 register, yet it could not be held that the goods were meant for clandestine removal.

6.1 I have carefully considered the submissions from both sides and perused the records. The defence submission is an interesting story! It is the claim of the respondents that the supplier of packing material supplied empty cartons by mistake. Since they had illiterate labourers, the said labourers again by mistake received those packing materials which were actually meant for other two units. Incidentally, the manufacturers whose name appearing in the cartons are eligible for concessional rates of duty in respect of detergent cakes manufactured by them which is not being disputed. Even if the claim of the respondents that the manufacturers of packing materials supplied to them wrongly and the illiterate labourers received them wrongly is to be accepted, there is no explanation whatsoever for not accounting the huge stock of goods manufactured by them. Out of 5,436 cartons of detergent cakes, only 69 cartons of detergent cakes carried the brand name of the respondents. The supply of huge stock of cartons, receipt of the same and use of them in the packing of detergent cakes are claimed to be "by mistake".

6.2 The original authority was very sure that the goods kept unaccounted were meant to be removed without payment of duty. Learned Advocate on behalf of the respondents submits that the said goods were definitely meant for to be accounted and cleared on payment of duty. While both are possible, the benefit of doubt goes to the respondents and therefore, it cannot be held that the goods lying there were meant for clandestine removal. However, non-accountal of such huge quantity of goods in their statutory records is not justified. The obligation of a manufacturer to account the goods manufactured by them on day to day basis is a strict obligation. Failure clearly attracts the provisions of Rule 25(1(b) of Central Excise Rules, 2002. Therefore, the goods are liable for confiscation and penalty is also imposable for irregular maintenance of accounts.

7. In view of the above, the Commissioner (Appeals) erred in setting aside the confiscation of the goods and therefore, the order of the Commissioner (Appeals) requires to be set aside and the order of the original authority deserves to be restored.

8. However, the redemption fine has been imposed by the original authority under presumption that the goods were meant cleared without payment of duty and that presumption cannot be endorsed.

9. There is no specific demand of duty in the order of the original authority. The learned Advocate for the respondents submits that the goods have since been accounted and cleared on payment of duty.

10. In view of the above, the appeal of the Department is disposed of as follows:-

a) the order of the Commissioner (Appeals) is set aside and the order of the original authority confiscating the goods and imposing penalty is restored.

b) while restoring the order of confiscation, the redemption fine imposed is reduced from Rs.4,50,000/- to Rs.2,00,000/-.

(M. Veeraiyan)
Member (Technical)

scd/