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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/1397 - 1398/2008 – SM [BR] Date 18/10/2010

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 SANGAM SALES CORPORATION, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1115 – 1116 / 2010-SM[BR] dated 28.9.2010 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 SANGAM SALES CORPORATION,
   435, INDUSTRIAL AREA B, GILL ROAD, MILLER GANJ, LUDHIANA.
2. Adv. / Consult SHRI SAURABH KAPOOR ADV.
   11 YADVINDRE COLONY THE MALL PATIALA[PB]

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)

2. SH. PANKAJ GOEL, AUTHORISED SIGNATORY OF
M/S SANGAM SALES CORPORATION,435, INDUSTRIAL AREA
B, GILL ROAD, MILLER GANJ, LUDHIANA..

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
Central Excise Appeal No.1397 of 2008

(Arising out of Order-in-Appeal No.2008-2009/CE/CHD/2008 dated 8.4.08 passed by the CCE(A), Chandigarh)

For approval and signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President

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?	No
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, Chandigarh Appellants

Vs.

M/s.Sangam Sales Corporation Respondent

And

in Central Excise Appeal No.1398 of 2010

CCE, Chandigarh Appellants

Vs.

Shri Pankaj Goel, Authorized Signatory Respondent

Present for the Appellant: Shri K.P.Singh, SDR
Present for the Respondent: Shri Saurabh Kapoor, Advocate

Coram: Hon'ble Mr. Justice R.M.S.Khandeparkar, President

Date of Hearing/Decision: 28.09.2010

Final **ORAL ORDER NO.** 1115-1116/2010 SM (BR)

PER: JUSTICE R.M.S.KHANDEPARKAR

Since the matter involves common question of law and facts, they were heard together and are being disposed of by this common order.

2. By the present appeals, the order passed by the Commissioner(Appeals) are sought to be challenged on the ground that the Commissioner(Appeals) could not have set aside the order passed by the adjudicating authority imposing penalty upon the respondents.

3. The penalty was sought to be imposed upon M/s.Sangam Sales Corporation to the extent of Rs.50,000/- under Rule 25 of Central Excise Rules, 2002 and penalty of Rs.10,000/- under Rule 26 of the said Rules against Shri Pankaj Goel, Authorized Signatory. The main allegation against the respondents was that as per their RG-23D register, there were stock of 140.580 MTs of duty paid goods as on 12.07.2005 but the same was not available for physical verification as the same had been sold in open market without issuance of any invoices and without recording the removal in their RG-23D register. The contention of the respondents was that the same was disposed of as non cenvatable product. The said contention was disproved by the adjudicating authority. However, the Commissioner (Appeals) while observing that there was no evidence collected by the department in respect of this allegation against the respondents and set aside the order imposing penalty.

4. The record apparently discloses a specific defence have been raised by the respondents that the goods were disposed of as non cenvatable products and their assertion that such disposal was accompanied by non-cenvatable invoices. Indeed the record nowhere discloses that the evidence have been collected by the department that the goods disposed of as cenvatale products. Merely because there is failure on the part of the respondents to record the fact of removal in the RG-23-D register, the imposition of penalty of Rs.50,000/- against

the firm and Rs.10,000/- on the authorized signatory has been imposed. There is failure on the part of the department to collect the evidence to counter the stand taken by the respondents which itself justifies the impugned order quashing imposition of penalty and calls for no interference. Hence the appeals fail and the same are dismissed.

(pronounced in the open court)

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

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