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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/1769/2008-1770/2008 – SM[BR] Date 26/07/2010

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 R.S. CHEMICALS, Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 806- 807 / 2010 –SM[BR] dated 20.7.2010 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 R.S. CHEMICALS,
   35, SAFIPUR, HARJINDER NAGAR, LAL BANGLA, KANPUR.
2. Adv. / Consult
   NONE;---------------

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)

3. SHRI RAJESH SINGH, AUTHORISED SIGNATORY,
M/S R.S. CHEMICALS ,35, SAFIPUR, HARJINDER NAGAR, LAL BANGLA, KANPUR.

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

SINGLE MEMBER BENCH

Date of hearing/decision: 20.7.2010

Central Excise Appeals No.1769, 1770 of 2008-SM

Arising out of the order in appeal No.194-195-CE/APPL/KNP/2008 dated 30.4.08 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.E., Kanpur .... Appellant

Vs.

M/s R.S. Chemicals .... Respondents
Shri Rajesh Singh, Authorised Signatory

Appearance:

Shri S.K. Bhaskar, Authorised Departmental Representative (JDR) for the Revenue and none for the respondents

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

Final Oral Order No. 806-807/2010 SM (Br)

Per M. Veeraiyan:

These are two appeals by the Department against the order of the Commissioner (Appeals) dated 30.4.2008.

2. None appears for the respondents. Notices issued to them have been returned back ~~and served~~
with the remark " No such company exists in the given address". Heard the learned DR.

3. When the premises of the respondents were visited on 24.3.06, the stock of Sumo Gutkha was found to be 165 packets as against the recorded stock of 6735 packets and 1100 packets of Mast Bahar were found as against the recorded stock of 11980 packets. The shortage was ascertained in presence of independent witnesses and in presence of Shri Rajesh Singh, Authorised Signatory. In his statement given under Section 14 of the Central Excise Act, 1944 Shri Rajesh Singh admitted the shortages and explained the shortages as due to removal of the goods by the employees of the factory without issue of invoices and without payment of central excise duty. The entire duty amount of Rs.2,00,049/- was paid on 27.3.06 and the same was intimated to the Department vide letter dated 19.5.06. There was no retraction of statement given by Shri Rajesh Singh, authorised signatory. The original authority confirmed the demand of duty and imposed penalty of equal amount on the respondent firm and a penalty of Rs.25,000/- on the authorised signatory. Commissioner (Appeals) set aside the order of the original authority on the ground that the duty stands paid before issue of show cause notice and that there was no corroboration for clandestine removal.

4. From the facts narrated above, it is noticed that shortages were huge when compared to the book stock and the shortages and clandestine removal stand admitted by the authorised signatory. The statement of the authorised signatory has not been retracted. Under these circumstances, the Commissioner (Appeals)'s order in setting aside the order of the original authority for want of corroboration is totally unjustified. It is not fair to expect the investigating officer to continue investigation on admitted facts. Further, the reasoning given by the Commissioner (Appeals) that no penalty can be imposed as the entire duty stands paid before issue of show cause notice is also not valid. In view of the above, the order of the Commissioner (Appeals) in so far as the same relates to setting aside the penalty on the respondent - assessee deserves to be set aside and the order of the original authority in this regard deserves to be restored.

5. However, it is noticed that the original authority has not given an option to the respondents – assessee to pay concessional amount of penalty in terms of the first proviso to Section 11AC. In view of the above, the option to pay concessional amount of duty requires to be extended in the light of the decision of the Hon'ble Delhi High Court in the case of K.P. Pouches – 2008 (85) RLT 483 (Del.).

6. The duty has not been contested before the original authority and before the Commissioner (Appeals).

7. The authorised signatory has given a statement absolving himself of any role in clandestine removal. No other evidence showing knowledge on the part of the authorised signatory has been relied upon by the Department.

8. In view of the above, the appeals are disposed of as follows:-

a) The order of the Commissioner (Appeals) in setting aside the penalty of Rs.2,00,049/- is set aside and the order of the original authority in this regard is restored.

b) The respondents – assessee is given an option to pay a sum of Rs.50012.25 within 30 days from the date of receipt of this order. If they fail to pay the amount within 30 days, the penalty shall be Rs.2,00,049/- as imposed by the original authority.

c) The Department's appeal seeking restoration of penalty on Shri Rajesh Singh, authorised signatory is rejected.

(M. Veeraiyan)
Technical Member

scd/