

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB (SM)

Appeal No. E/ 2537/2000-NB(SM)

Dated : 17-1-2001

CEGAT
NEW DELHI

To,

M/s Hitkari Potteries Ltd.,

Plot No. 4, Indl. Area,

Sector-I Farwanao (H.P)

In the matter of :

M/s Hitkari Potteries Ltd.,

Appellant

vs.

CCE Chandigarh

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/76/2001/NB(SM)
Dated : 17-1-2001 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

Asstt. Registrar

NB (SM)

1. CCE Chandigarh
2. CCE/EE/(Appeal) Chandigarh
3. Chief Commissioner of Central Excise/ Customs. New Delhi
4. Adv./ Consult. Shri Ajay Jain, Adv.,
1293, sector - 18-e,
Chandigarh.
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhisim Pitamah Marg, opp. Sachdeva P.T. College of
Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy
15. M/s Cen-cus Publication

Asstt. Registrar

3, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI

Appeal No. E/2537/2000-NB(S)

(Arising out of Order-in-Appeal No.752-CE/CHD/2k
issued under C.No.369/CE/APPL/CHD/99/2271 dt.
26.4.2000 passed by the Commissioner (Appeals) Central
Excise, Chandigarh)

M/s. Hitkari Potteries Ltd.
(On merits)

.. Appellants

vs.

C.C.E. Chandigarh
(Rep. by Shri Y.R. Kilania, JDR)

..Respondent

DOH: 18.10.2000

Final Order No. A/76/01/NB (S/m) dt: 17.9.2001

Per K.K. Bhatia, Member (T):

The appellants manufacture 'Plastic flexible film' and 'Plastic pouches' falling under Sub-headings 3920.32 and 3923.90 respectively. The Central Excise Officers of Chandigarh Commissionerate visited their factory premises on 5.12.91 and verified their stocks. On verification, they found that the final finished stock of flexible plastic films valued at Rs.65,242.10 involving Central Excise duty of Rs.17,941/- was in excess of the recorded balances in their RG-1 Register. These goods were seized and the proceedings were drwn against them, The party pleaded before the Central Excise authorities that the goods were yet to be packed when the Central Excise Officers visited their premises. They have also pleaded that the goods were still lying in the factory premises and there was no attempt to remove them. The Asst. Commissioner of Central Excise Division, Shimla, however, in his order dt. 27.11.98 held that there is a specific column in

the RG 1 Register to record the production as soon as it is packed. He therefore held that the party had violated the provisions of Rules 53, 173Q and 226 of Central Excise Rules, 1944. Consequently, he ordered confiscation of these goods but gave an option to the party to redeem the same on payment of fine of Rs.6,000/-. He further directed them to record the goods on redemption in their RG.1 Register and clear them on payment of duty of Rs.17,941/- He also imposed a penalty of Rs.2,000/- on the appellants under Rule 173Q read with Rule 226.

2. The party filed an appeal against the above order of the Asst. Commissioner but the Commissioner (Appeals), Chandigarh vide his order dt. 17.4.2000 rejected the appeal of the party upholding the order passed by the original authorities.

3. The present appeal is against the above order of Commissioner (Appeals). The appellants are not present and their Counsel, Shri Ajay Jain, Advocate has sent a letter dt. 18.10.2000 to dispose of the appeal on merits. I have heard Shri Y.R. Kilania, JDR for the Respondents. It is observed from the show cause notice dt. 22.4.92 issued to the appellants in this case that Shri Sanjay Bhandari, Asst. Production Manager of the appellants in his statement dt. 5.12.91 had stated that the 229 rolls of plastic film were manufactured only on the previous day i.e., 4.12.91 and that the same were not packed by 9.00 A.M. and the process of packing was completed by 10.00 A.M. on 5.12.91. He also deposed that the gross and net weight was not recorded on the packed cartons, as they

uniformally contained one plastic cling film roll of size of width 450 mm, thickness 23 micron and length 400 mtrs. weighing 3.85 Kgs. This leads to the conclusion that the seized goods had not attained the stage at which they would have been entered into the statutory record. The party has maintained this instance before the original as well as the appellate authority. There are no other contrary facts brought on record by the Department. It is not the case of the Department that the finished goods were not entered into the statutory record, as they were intended to be removed without payment of duty. Under the circumstances, there is no warrant to order for their confiscation and to impose a penalty on the appellants. The goods in any case would be subjected to duty on their clearance after being recorded in the RG.1 Register as directed by the Asst. Commissioner.

4. This appeal is therefore allowed setting aside the order passed by the Commissioner (Appeals). The appellants will be entitled to the consequential relief, if any.

ms.

Dt:14.12.2k

(K.K. Bhatia)
Member (Technical)