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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/2550/00-NB(SM)

Dated : 19/11/2001

CEGAT

NEW DELHI

To,

M/s Bee Ess Agro Inputs (P) Ltd.,

151 Focal Point,

Mehra Road, Amritsar (PB)

In the matter of :

M/s Bee Ess Agro Inputs (P) Ltd.,

Appellant

vs.

CCE Chandigarh - II

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/88/2001/NB(SM)
Dated : 14-12-2000 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 - II
2. CCE/CE/(Appeal) Chandigarh - II
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult.
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
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11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
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CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI

Appeal No. E/2550/00-NB(S)

(Arising out of Order-in-Appeal No. 1205 to 1207/CE/CHD/2000 & C.No. 1577/CE/APPL/CHD/99/3109 dt. 29.6.2000 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

M/s. Bee ESS Agro Inputs (P) Ltd. .. Appellants
(On merits)

vs.

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

DOH: 18.10.2000

FINAL Order No. A/88/01/NB (S/m)
dt:

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

The brief facts in this case are that the appellants manufacture 'Rubber Rolls' falling under Chapter No.40 of the Schedule to the Central Excise Tariff Act, 1985. During the course of manufacture of these products, 'Compounded Rubber' falling under Chapter sub-heading 4005.00 is manufactured and consumed captively in the manufacture of final product of 'Rubber Rolls'. The intermediate product, Compound Rubber, prior to 1.3.94 was exempt from payment of Central Excise Duty under Notfn. No.152/87-CE dt. 25.5.87. This notification was rescinded with effect from 1.4.94 vide Notfn. No.64/94-CE dt. 1.3.94. Consequently, the Compounded Rubber became chargeable to duty @ 20% Advalorem. The product, Compounded Rubber was subsequently subjected to 'Nil' rate of duty, if consumed captively, vide Notfn. No. 74/94-CE dt. 28.3.94. The Joint Commissioner (Preventive) of

Central Excise, Chandigarh-II vide his order dt. 4.10.99 confirmed a duty of Rs.36,078/- on the appellants on the Compounded Rubber consumed by them captively during this period. He further imposed a penalty of an equivalent amount on them under Rule 173Q read with Section 11-AC of the Central Excise Act, 1944.

2. On appeal, the Commissioner (Appeals), Chandigarh confirmed the duty amount on the appellants vide his order dated 27.6.2000 but set aside penalty imposed on them.

3. The present appeal is against the above order of Commissioner (Appeals). The appellants are not represented. They have, however, sent a communication dt. 26.9.2000 requesting for the disposal of their appeal on merits. I have heard Shri Y.R. Kilania, JDR for the Respondents. The appellants are not disputing that during the period 1.3.94 to 27.3.94, they were liable to pay the Central Excise duty totally amounting to Rs.36,078/- in respect of the Compounded Rubber manufactured and consumed by them captively in the manufacture of Rubber Rolls. They have, however, pleaded that they were doing the same thing prior to 1.3.94 and after 27.3.94. Therefore, it is contended that there is no suppression or any mis-statement on their part and the duty is not liable to be recovered from them under the proviso to Section 11-A by invoking the extended period for demand. In this case, they have relied on the judgement of the Hon'ble Supreme Court in the case of M/s. Chemphur Liniments & Medicaments - 1989 (40) ELT 276 (S.C). I have considered these submissions. As

already stated, it is not in dispute that prior to 1.3.94, the Compounded Rubber was exempt from payment of Central Excise Duty under notification which got rescinded with effect from 1.3.94 and again with effect from 27.3.94, the duty was exempt on Compounded Rubber used captively by issuing another notification. Therefore, the appellants became liable for duty for a period of 27 days i.e., from 1.3.94 to 27.3.94. The appellants have only pleaded that the extended period of demand is not liable to be invoked in their case, but they however, have not been able to establish by any acceptable evidence that they were under bonafide belief that no duty was liable to be paid on the Compounded Rubber manufactured and captively consumed by them. They also filed no Classification List in respect of this product with the jurisdictional Central Excise authority. The ratio of the decision of the Tribunal in the case of M/s. Super Doab Sugar Mills vs. CCE reported in 1999 (111) ELT 262(T) is against them. The penalty imposed on them by the original authority is already set aside by Commissioner (Appeals). Consequently, I find no ground to interfere in the order passed by the lower appellate authority. The appeal is therefore dismissed.

(Announced in the Court)

ms.

Dt:14.12.2k

(K.K. Bhatia)
Member (Technical)