

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/230/00-NB(SM)

Dated : 22/1/2001

CEGAT  
NEW DELHI  
To,

M/s Tirupati Cigarettes Ltd

Plot No. 206, Ganeshpur

Shivpur, Varanasi - 221 003.

In the matter of :

M/s Tirupati Cigarettes Ltd,

Appellant

vs.

CCE Allahabad

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/98/2001/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 Allahabad
2. CCE/EE/(Appeal) Allahabad
3. Chief Commissioner of Central Excise / Customs, Kanpur
4. Adv./Consult. Shri K.K. Gupta, Adv.,  
B-137, Rampur, Ghaziabad (U.P.)
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

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

Appeal No. E/230/00-NB(S)

(Arising out of Order-in-Original No. MP(28)/96)30F  
1999 dt. 07.09.99 passed by the Commissioner of  
Central Excise & Customs, Allahabad)

M/s. Tirupati Cigarettes Ltd. .. Appellants  
(Rep. by Shri K.K. Gupta, Advocate)

vs.

C.C.E. Allahabad .. Respondent  
(Rep. by Shri V.M. Udhoji, JDR)

DOH: 28.9.2000

*FINAL* ORDER NO. *A/98/01* / *NB (S/m)*  
DT:

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

The appellants manufacture Cigarettes falling under Sub-heading No.2403.11 of the Schedule to the Central Excise Tariff Act, 1985. They received 'Cut Tobacco' at concessional rate of duty by following the procedure as prescribed under Chapter X vide Exemption Notfn. No.356/86-CE dt.24.6.86. The party vide their applications dt. 7.11.95 and 14.11.95 applied to the Commissioner of Central Excise, Allahabad for the destruction of 100 bags, weighing 3,400 Kgs cut tobacco received on 27.10.95 and 339 bags, weighing 11,525 Kgs of 'Esquire Filter Tobacco' received on 6.2.95/13.2.95 respectively on the ground that the same had deteriorated considerably and was not fit for manufacture of Cigarettes. The respective samples were drawn from the consignments of cut tobacco and sent to the chemical examiner for ascertaining the fact whether the condition of the cut tobacco at that time was fit for

manufacture of Cigarettes. The chemical examiner, C.R.C.L. New Delhi in his report dt. 25.4.96 stated as follows:-

"Each of the two samples was 'cut tobacco' in the form of brown leaves, stalk etc. having moisture 13.8% and 15.3% ash content 16% and 16.7% respectively".

"It shows no sign of deterioration and might find use for the manufacture of cigarettes."

2. The appellants were issued a show cause notice dt. 11.7.96 by the Commissioner of Central Excise, Allahabad in which, they were called upon to show cause as to why their applications dt. 7.11.95 and 14.11.95 seeking for the destruction of 100 bags weighing 3,400 Kgs cut tobacco and 339 bags, weighing 11,526 Kgs. of Esquire Filter tobacco respectively should not be rejected in terms of Rule 49 of Central Excise Rules, 1944 and why Central Excise duty leviable thereon should not be demanded from them. After considering the reply of the party, the Commissioner of Central Excise, Allahabad passed an Order-in-Original dt. 13.9.99 in which he rejected the applications of the party for destruction of 14,925 Kgs. of cut tobacco. He further held that the appellants were required to pay Central Excise duty of Rs. 10,96,383<sup>1/2</sup> leviable on the aforesaid quantity of cut tobacco procured under Chapter X procedure in terms of Rule 196 of the Central Excise Rules, 1944. He has stated that since the party already paid a sum of Rs.7,46,300.00, therefore, they were ordered to pay the balance amount of Rs.3,50,083.00.

3. The present appeal is against the above Order passed by the Commissioner. I have heard Shri K.K. Gupta, Advocate for the appellants and Shri V.M. Udhoji, JDR for the Respondents. Ld. Advocate for the appellants is relying on the order No.C-11/986-WZB dt. 25.3.2000 passed by the West Regional Bench of the CEGAT in appeal No.E/2296-R/96-Bom. in the case of M/s. GTC Industries Ltd. vs. CCE Vadodara. The appellants filed a copy of this decision. The operative portion of this decision is reproduced below:

"(Paras 3 to 6):

Para 3: We have heard Shri M.P. Baxi, Advocate for the assesseees and Shri Deepak Kumar for the Revenue.

Para 4: We find that the stipulation that the tobacco should be sent to the original manufacturer and alternately the duty should be paid comes out of the provisions of Rule 1968 which provision the Tribunal in their Judgement had specifically held as not applicable to the issues on hand. The Tribunal also had made the categorical observation on the burden of duty and held that the duty could not be demanded. The ld. Commissioner's order having been made in defiance of the Tribunal's belief cannot sustain.

Para 5: The order of the Tribunal cited above, in effect permitted the destruction with two conditions. The first was verification of the origin of the tobacco and the second was independent expert opinion as to the usability and marketability of the tobacco offered for destruction. We find that neither the traders nor the chemical examiner could be termed as experts. No doubt the dealers were dealing in tobacco but then the tobacco used in cigarettes is an entirely different commodity from chewing biri and hookah tobacco and any opinion expressed by dealers not trading in that particular variety should be viewed with caution. Even otherwise we find that the dealers themselves had noticed fungi on the tobacco as also discolouration. In the manufacture of cigarettes, the manufacturer takes great care to maintain the quality of tobacco because a cigarette which does not smell or taste as per the retained memory of the smoker is liable to be rejected, losing for the manufacturer a lifelong customer. Therefore, opinion should have been taken of that expert who was associated with the cigarette industry or a person who had done research in tobacco used in cigarettes. The opinion of a stray trader would be defeating the purpose stipulated by the Tribunal. As regards the chemical examiner's opinion, we find that apart from certifying the substance as tobacco, (which was never in doubt), there is nothing in it.

it.

Para 6: We therefore set aside the impugned order and remand the matter back to the Jurisdictional Commissioner. He will consult either a person who has considered experience in the manufacture of cigarettes and/or in the alternative; a scientist or a person from a research centre associated with the tobacco of the kind used for manufacture in cigarettes. The assesseees are also free to associate with this enterprise. We would suggest that on predetermined date the Commissioner should subject, the tobacco to the examination. Since a very long time is lapsed we direct the Commissioner to do so within 8 weeks from the receipt of this order".

3. I have considered the submissions made before me. The Department is not disputing that the facts of the present case are fully covered by the ratio of the above cited decision. Therefore, I follow the same and set aside the order passed by the Commissioner. I remand the matter back to the Commissioner for considering the matter afresh by following the procedure as directed in Para 6 of the CEGAT order extracted above. The Commissioner shall decide this matter afresh within 8 weeks from the date of receipt of this order.

4. The appeal is thus allowed by remand in above terms.

(Announced in the Court)

ms.

Dt:14.12.2k

(K.K. Bhatia)  
Member (Technical)