

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/2300/00/NB(SM)

Dated : 16/2/2001

CEGAT

NEW DELHI

To,

M/s Hawkins Cookers Ltd

Phagnara Road

Hoshiarpur, (Punjab)

In the matter of :

M/s. Hawkins Cookers Ltd

Appellant

vs.

CCE Chandigarh

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/283/01/NB(SM)
Dated : 12/2/2001 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

1. CCE Chandigarh
2. CCE / CC / (Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs. Chandigarh
4. Adv. / Consult. K.K. Brand, Adv
A-5, Rajpat Nagar - II
New Delhi -
5. S.D.R. - NB(SM)
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. cen-cus.

Asstt. Registrar NB(SM)

**In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi**

E/2300/00 NB(SM)

APPEAL NO.....OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.
753/CE/CHD/2000 dt. 17-4-2000

.....DATED.....

PASSED BY CCE CHANDIGARH.....

.....

Date of decision..... 12-2-2001

M/S HAWKINS COOKERS LTD.....APPELLANT (S)

Represented by Sh./Smt. K.K.ANAND, ADVOCATE.....

VERSUS

.....CCE CHANDIGARH.....RESPONDENT (S)

.....A.K.Jain, JDR
Represented by Sh./Smt.....

CORAM : SH.V.K.AGRAWAL: MEMBER (TECHNICAL)

.....

.....

To be referred to the Reporter or not ?
FINAL ORDER NO. A/283/01/NB C/P/M

Per..... V.K.AGRAWAL:

In this appeal filed by M/s Hawkins Cookers Ltd, the issue involved is whether penalty is imposable when the excisable goods are cleared under invoices but without debiting the PLA. The Appellants have also challanged the

quantum of redemption fine fixed by the Adjudicating Authority for redeeming the goods ordered to be confiscated.

2. Shri K.K.Anand, Ld. Advocate, submitted that on 19-6-98, the Appellants had removed 1237 Pressure Cookers under invoice No. 375 dt. 19-6-98 at 11:35hrs ; that the value of these goods was Rs. 6,05,386 and duty involved was Rs. 48,430.90p; that they had clearly mentioned PLA debit entry No. in the invoice; that the goods were removed to Central Warehousing Corporation; that Central Excise Officers visited their premises of at 12.25 hrs and as duty had not been debitted in PLA they seized the goods on the same day. He, further, mentioned that they had debitted the duty immediately against entry No. 155 in PLA ;that there was no malafide intention to evade payment of duty which is evident from the fact that PLA debit entry No. was mentioned on the invoice; that due to heavy work pressure the posting in the appropriate register was at a slower pace and being alone on that particular day this clerical error of not actually debitting PLA took place; that further, two out of three persons concerned from the despatch Department were absent; that there was sufficient balance in their PLA; that no penalty is imposable under Section 11AC of the Central Excise ACT as there was no malafide intention on their part; that

redemption fine is on very high side.

4. Countering the submissions, Shri A.K. Jain, ld. D.R., submitted that there was clear mis-declaration by the Appellants is as much as they had mentioned PLA debit entry No. and the invoice when no duty was debited in PLA; that the goods were removed without payment of duty which is prohibited under Rule 9 of the Central Excise Rules; that the Appellate Tribunal in the case of Steel Industries Vs. CCE Cochin, 1986 (24) ELT 314 has held that the fact that there was sufficient balance in the PLA by itself does not make clearances without proper details valid in law.

4. I have considered the submissions of both the sides. I do not find substance in the submissions of the ld. DR that the mandatory penalty under Section 11AC is impossible in the present matter. The imposition of penalty under Section 11AC is stipulated in circumstances where the duty has not been paid on account of fraud, collusion ^{or} willful mis statement, etc. Since in the present matter the goods were cleared under the invoice on which the PLA debit entry No. was also mentioned and the fact that the officers had visited the factory premises on same day after less than 60 minutes of the clearance of the goods it cannot be said that

there was any fraud, wilful misstatement, etc. The similar views were expressed by the Tribunal in the case of GOM Industries Ltd. Vs. CCE Bhopal, 2000(124) ELT 843 (T) relied upon by the ld. Advocate. However, the fact remains that the goods were cleared without actually debiting the duty amount in PLA and, therefore, penalty under Rule 1730 is imposable on the Appelleants. Taking into account all the facts of the case, the interest of justice will be met if the appellants are directed to pay a penalty of Rs. 5,000/- only. Even in the case of Steel Industries the Tribunal observed that "availability of sufficient balance in the PLA is a matter which could be kept in view in imposing penalties for infracting Rules" and the Tribunal had reduced the penalty in that case also. Similarly in view of the fact that the goods were cleared only to Central Warehousing Corporations, a Central Government Undertaking, where the goods wer~~e~~ properly accounted for, a token redemption fine should be sufficient. I, therefore, reduce the redemption fine to Rs. 6,000/- only. The appeal is thus allowed partly.,

(V.K.AGRAWAL)

MEMBER (TECHNICAL)

Sunita

12-2-2001