

GRAM : CEGCANAL

REGISTERED/A.D

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

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

Appeal No. E/ Cross | 266 | 00 - NB (SM) BENCH NB (SM)
E/ 2615 | 00 - NB (SM)

Dated : 23/1/2001

CEGAT
NEW DELHI

To,

CCE Bhopal

In the matter of :

CCE Bhopal

Appellant

vs.

M/s Chetan Industries

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/114/2001/NB (SM)
Dated : 16-1-2001 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 :

M/s Chetan Industries

Asstt. Registrar

NB (SM)

1. 67 - C, Indl. Area, Mandideep,
Distt. Raisen (M.P.)
2. CCE/CE+(Appeal) Bhopal
3. Chief Commissioner of Central Excise / Customs. Jaipur
4. Adv. / Consult. Shri Rajendra Katyar, Adv.,
KM-152, Kavi Nagar,
Chhazabad (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
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Asstt. Registrar

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

E/Cross/266/00NB(SM)

E/2615/00-NB(SM)

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

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

721-CE/BPL/2000 dt. 9-5-2000

.....DATED.....

PASSED BY.....COMMISSIONER (APPEAL) CENTRAL
.....EXCISE, BHOPAL.....

16-1-2001

Date of decision.....

CCE BHOPAL

.....APPELLANT (S)

S.C.PUSHKARNA,

.....Represented by Sh./Smt.....

JDR

VERSUS

.....M/s CHETAN INDUSTRIES

.....RESPONDENT (S)

.....Represented by Sh./Smt. P. KATIAR,
ADVOCATE

.....ADVOCATE

CORAM:

.....SHRI V.K.AGRAWAL, MEMBER.(TECHNICAL).
.....
.....

To be referred to the Reporter or not?

FINAL ORDER NO. A/114/01/NB CE/M

V.K.AGRAWAL:

Per.....

This is an appeal filed by
Commissioner Central Excise against the
Order in Appeal No. 721-CE/BPL/2000 dt. 9-
5-2000 passed by the Commissioner
(Appeals), Bhopal.

2. Shri S.C.Pushkarna, Ld. DR,
submitted that on 22-4-98 when the Central
Excise Officers visited the factory

Premises of M/s Chetan Industries they found 317 Coolers and Eight Air Conditioners in excess of the balance shown in RG-1 Register; that the Assistant Commissioner, under the Adjudication Order No. 47/99 dt. 21-5-99, confiscated the seized goods (except 2 Air Conditioners) found in excess and released them on payment of redemption fine and also imposed a penalty of Rs. 20,000/-; that Commissioner (Appeals) however, set aside the Adjudication Order holding that there was nothing on record to indicate that the goods were about to be removed from the factory, relying upon the decision in the case of Balls & Clypebs 1997(92) ELT 496. He, further, submitted that it is the primary duty of an assessee to fulfill the provisions of the Central Excise Rules; that as per Rule 53 of the Central Excise Rules, a manufacturer has to maintain a stock account in which daily entries have to be made regarding goods manufactured and removed; that as the goods have not been entered in the statutory registers they are liable for confiscation; that the Air Coolers even without bottom pads were completely manufactured as the bottom pads were to be used after packing the coolers

in cartoons. Reliance was placed on the decision in the case of Mumal Marbles Ltd. Vs. CCE 1996 (85) ELT 289 (T). In respect of Six Air Conditioners, the Ld. DR, submitted that those goods were in packed condition and there were no test records available and as these were not entered in RG-1 Register, the same are liable for confiscation.

3. Opposing the appeal, Shri R. Katiar, Ld. Advocate, submitted, that without bottom pads the coolers were not marketable and they had not attained the stage of entering them into RG-1 Register. He relied upon the decision in the case of Moti Laminates Pvt. Ltd Vs. CCE 1995 (76) ELT 241. In respect of Air Conditioners, he submitted that these were received after testing only on 22-4-98 and would have been entered in RG-1 Register after close of the day; that the private records like testing registers and contractor's account were found correctly written and as such no confiscation was warranted. Reliance was also placed on the decision in the case of Pooja Forge Pvt. Ltd Vs. CCE 1996 (84) ELT 37(T) and Hindustan General Industries Vs. CCE 1997 (96) ELT 382.

4. I Have gone through the submissions of both the sides. In respect

of coolers in question, it is not in dispute that bottom pads were not fixed. Accordingly it cannot be said that the coolers were in fully manufactured conditions, ready for removal from the factory. As the goods were not in fully manufactured conditions they are not required to be entered into RG-1 register and as such the coolers were not liable for confiscation. As far as Air Conditioners are concerned, it has been clearly mentioned by the Assistant Commissioner, in the Adjudication Order, that till the date of visit of the officers there were 119 test reports and the production record in RG-1 Register was 117 and Two Air Conditioners were found in unpacked conditions^{which} had not met the quality control test. He has given clear findings that no test record were maintained in respect of six Air Conditioners in question which were found in packed conditions. The Ld. DR has rightly pointed out that as per provisions of Rule 53 of the Central Excise Rules goods manufactured and removed from the factory are to be entered in daily stock account on every day unless permitted otherwise. The Respondents have not been successful in showing that the air

conditioners in question were manufactured the same day, the officers visited the factory. As the goods were not entered in the statutory register, they have become liable to confiscation under Rule 173 Q 1(b) of the Central Excise Rules. The decisions relied upon by them are not applicable to the facts of the present case. In *Balls and Clypebs Ltd.*, the imposition of penalty was upheld by the Appellate Tribunal. The confiscation was set aside following the decision in the case of *Garden silk Mills Vs. CCE 1991 (51) ELT 373*. In the said case the goods were not packed in boxes which was the usual packing for the removal of the goods. Similarly in *Pooja Forge case, supra*, the goods were held not to have reached RG-1 stage in as much as they were required to have been weighed, sorted out and packed in gunny bags and cartons. In the present case the Air Conditioner were in packed conditions and non-entering of fully manufactured goods in statutory records is the first steps towards removal of the excisable goods without payment of duty. This view has been upheld by the Tribunal in the case of *Hindustan General Industry Vs. CCE, 1997(96) ELT 382(T)*. Accordingly I set aside the impugned Order regarding Air

Conditioners and held that the Air Conditioners are liable for confiscation. However, taking into account all the facts Air Conditioners can be redeemed on payment of fine of Rs. 15,000/- only. The penalty is also imposable on the Respondents. The interests of justice will be met if they pay only Rs. 5,000/- as penalty.

The appeal as well as cross objections are disposed of in the above terms.

(V.K.AGRAWAL)

MEMBER (TECHNICAL)

Sunita
22-1-2001