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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 25/04/2011

Appeal No. **E/376 /2009 – SM [BR]**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant
Vs
M/S KUCHCHAL CHEMICALS LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 208 / 2011 –SM[BR]** dated 31.3.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S KUCHCHAL CHEMICALS LTD
E-22, UPSIDC, MALWAN, DISTT-
FATEHPUR.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi -
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
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14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. III

Date of Hearing : 31.3.2011

Excise Appeal No. 376 of 2009-SM and Cross-Objection No. 70 of 2009-SM

[Arising out of the Order-in-Appeal No. 182-CE/LKO/08 dated 24.11.2008 passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow]

Coram:

Hon'ble Mr. Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

CCE, Lucknow — Appellant

Vs.

M/s Kuchchal Chemicals Ltd. — Respondent

Appearance:

Appeared for Appellant : Shri K.P. Singh, DR
Appeared for Respondent : Ms. Sukriti Das, Advocate

CORAM: Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. 208/2011-SM BR dated............

Per Mathew John:

This is a case where the respondent was engaged in the manufacture of organic composite solvent said to be classifiable under Tariff Heading 27101113. A team of preventive officers visited the factory premises of the appellant on 23.3.2007 verified the stock of finished goods as well as raw materials kept in the factory. Shortages as given in the table below was noticed.

S.No.	Name of the Commodity	Stock as per stock Register (in KL)	Stock on physical verification (in KL) vide Ann. 'A'& Calibration Chart	Difference (in KL)	Value	Duty with BED @ 16% Education Cess @ 2% and Sec & Higher Education Cess @ 1%	Total Duty
1.	OCS	47.640	44,383	(-) 3,257	84,682	13,956	31,003
2.	OCS(P)	16,610	16,322	(-)0.288	7,488	1,234	
3.	ICS(III)	19.850	14,206	(-)5.644	95,948	15,813	
4.	NAPTHA (input)	0.0	94,192	(+94,192	17,39,851	2,86,727	2,95,278
5.	PENTANE (input)	66.505	69,433	(+)2,928	51,887	8,551	

2. After investigation, a case made out that respondent company was manufacturing goods without payment of duty and clandestinely clearing such goods. A show cause notice was issued and adjudicated. The order resulted in confirmation of the duty amounting to Rs.31,003/- and confiscation of 94.92 KL of Naphtha and 2.9928 KL of pentane under Rule 15(1) of Cenvat Credit Rules, 2004. An option was given for redeeming the goods on payment of fine of Rs.2.00 lakhs and Rs.5,000/- respectively. Penalty equal to duty amount of Rs.2,86,727/- plus Rs. 8,551/- involved in the excess quantity of the two inputs was imposed under Rule 15 of the Central Excise Rules. Further, a penalty of Rs.31,003/- was imposed under Rule 25 of the Central Excise Rules 2002 read with Section 11AC of the Central Excise Act, 1944.

3. The respondent filed an appeal with the Commissioner (Appeals) who confirmed differential duty demanded in respect of the final products found short. However, he set aside the confiscation of the excess raw materials found during stock taking. Consequently, the final penalty on account of excess goods was also set aside. Further, he reduced penalty under Rule 25 from Rs.31,003/- to Rs.10,000/-. The department is in appeal, aggrieved by the said order.

4. It is their contention that there were instances of unaccounted removal of finished goods from the factory of the respondent. Therefore there is a presumption that the excess inputs were kept for manufacture and, therefore, the respondent had violated the provisions of Rule 25(b) and 25(d) of Central Excise Rules, 2002 and the goods are rightly confiscated by the original authority. In the matter of penalty imposed, the ld. DR argues that as per Rule 25 read with Rule 11AC penalty equivalent to the duty evaded should have been imposed and the appellate authority had no discretion to reduce the duty.

5. The ld. Advocate for the respondent submits that the excess of raw material found was on account of the fact that the person dealing with excise record was on leave for two days and they had no intention to evade payment of duty. In the matter of penalty under Rule 25 she refers to the decision of **CCE Vs. Rama Wood Craft (P) Ltd.** reported in 2008 (225) ELT 348, where it has been decided that the penalty to be imposed under Rule 25 need not be

equal to the duty evaded because the wording is that the person concerned "shall be liable to a penalty not exceeding the duty on the excisable goods in respect of any contravention" has been committed.

6. Considered the arguments and perused the record.

7. The impugned goods found in excess were received in the factory under cover of invoices dated 11.7.07. Considering the nature of these goods within a day or two the goods should have been received in the factory of the respondent and there is no case that the person who was dealing with excise formalities were on leave during that time. Clandestine removal has been accepted by the party inasmuch as they have not contested the duty demanded. It is fairly evident that this respondent is not an assessee who accounts all goods manufactured. Therefore there is a burden on them to prove that the excess raw material was due to bonafide mistake. The respondent has failed to discharge this burden. Therefore, I am not in agreement with the finding of the Commissioner (Appeals) that the department has not been able to prove the intention to evade any excise duty in relation to the excess unaccounted raw material found in the factory.

8. In the matter of penalty imposed, I am in agreement with the submission of the ld. Advocate that the penalty to be imposed under Rule 25 need not be equal to the duty evaded. Therefore, I do not

want to interfere with the decision of Commissioner (Appeals) in reducing the penalty from 30,000/- to Rs.10,000/-.

~~8.~~ 9. In the matter of redemption fine for the goods confiscated, I find that the order-in-original has imposed redemption fine of Rs. 2.00 lakhs which roughly corresponds to the duty payable on the inputs found in excess. Redemption fine cannot be correlated to the duty payable on the inputs because there is no case that such duty has not been paid. In the matter of redemption fine, normally the guideline is the profit that can accrue to the party due to the proposed clandestine activity should be taken as basis. This would mean that the duty that can be evaded by manufacturing goods clandestinely and removing without payment of duty has to be the reasonable basis. This duty will be more than the duty paid on inputs. So I do find that the redemption fine imposed in the order-in-original is maintainable.

~~9.~~ 10 Accordingly, I restore the confiscation order along with redemption fine imposed as per the order-in-original. The cross objection filed by the ~~appellant~~ Respondent is also disposed of as partially allowed as above.

(Dictated & pronounced in open Court)

(Mathew John)
Member (Technical)

RM

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Mail : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
SINGLE MEMBER APPEAL BRANCH

Dated: **25/06/2012**

MISC Order No : 170/2012 –SM[BR]

ROM Application No. : E/ROM/37/2011
Appeal No. : E/376/2009-EX[SM]

1. Appellant :
C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

2. Respondent :
KUCHCHAL CHEMICALS LTD
E-22, UPSIDC, Malwan, Distt- Fatehpur.

3. Advocate(s) / Consultant(s) :
NONE:----------------

4. C.D.R

5. Bar Association, CESTAT, New Delhi

6. Director Publications, Customs, Excise. I.P. Estate, New Delhi

7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-110003

8. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-600017

9. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

11. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

13. Office Copy

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Assistant Registrar
SINGLE MEMBER Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing :15.6.2012

No. E/ROM/37/2011-SM in E/376/2009-SM

{Arising out of Final Order No. 208/2011-SM(BR) dated 31.3.2011 passed by the CESTAT, New Delhi}

CCE, Lucknow — Appellant/Applicant

Vs.

M/s Kuchchal Chemicals Ltd. — Respondent

Appearance

Appeared for Appellant : Ms. R. Jagdave, A.R. & Sh. Sanjay Jain, A.R.

Appeared for Respondent : None

CORAM:**HON'BLE SHRI MATHEW JOHN, MEMBER (TECHNICAL)**

Misc Order No. 170 / 2012-SM (BR) dated............

Per Mathew John:

Revenue has filed this application for rectification of Final Order No.208/2011-SM(BR) dated 31.3.2011.

2. The issue raised in the application is that Revenue had filed an appeal against the order of the Commissioner (Appeals) setting aside confiscation and penalty ordered by the adjudicating authority while deciding the appeal filed by Revenue. The Tribunal upheld the confiscation order as also

the redemption fine which was originally imposed by the adjudicating authority but did not mention about restoration of penalty as ordered in item-2 of the order of the adjudicating authority. The adjudicating authority had imposed a penalty of Rs.5000/- under provisions of Rule 15 of Cenvat Credit Rules 2002.

3. I find that the order is silent about penalty imposed and it is proper to impose penalty when confiscation and redemption fine are upheld. Accordingly, I restore the penalty imposed by the adjudicating authority to the extent of Rs.2500/- only because I consider that such amount of penalty will meet the ends of justice. The application for rectification of mistake is disposed of accordingly.

(Pronounced in Court)

(Mathew John)
Member (Technical)

RM