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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/STAY/1461-1462,1597-1599,1603, 1664/2011, 1815,1874-1875,2512-2514, 2596 /2011 - CU In C/247 -248 ,269 -271,273 ,283 ,316,322-323,471-473,489 /2011 - CU[DB]

Date
03/01/2012

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
M/S GOEL OIL STORES,

KERUGANJ, SHAHJAHANPUR (U.P.)
M/S GOEL OIL STORES,

Appellant
Vs
C.C.E. MEERUT II
Respondent

STAY ORDER NO.C/479-492/2011

I am directed to transmit herewith a certified copy of **Final order No.C/539-552/ 2011 CU[DB]** dated 27.12.2012 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult MR. KAMALJEET SINGH
J-144, PATEL NAGAR -I,
GHAZIABAD.

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 Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

Please rest of the addresses at back.

P.T.O

M/S KUMAR & SONS,
STATION ROAD, UJHIANI.

M/S GANGA SALES AGENCY
HANUMAN GARHI ROAD,
CHANDAUSI (U.P.)

M/S BHAGWAN VANASPATI MILLS LTD.,
UJHANI, BADAUN (U.P.)

SH SANJEEV AGARWAL(DIRECTOR)
M/S BHAGWAN VANASPATI MILLS LTD,
UJHAI, BADAUN.

M/S ANIL KUMAR SUNIL KUMAR,PUNJABI
MARKET, PUCCA KATRA,
AONLA BAREILLY.

M/S JAGANNATH MADAN LAL
48/48,TILK ROAD BALUA GHAT,
NEAR PANCHMUKHI MAHADEV,
ALLAHABAD.

M/S J.K.ENTERPRISES,
KATRA NAJ, MORADABAD(U.P.)

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M/S JEEVAN RAM SUNIL KUMAR,
RAILWAY GANJ, HARDOI (U.P.)

SH. H.B. AGARWAL, DIRECTOR OF
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UJHANI, BADAUN (U.P.)

MR. S.P. OJHA
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ALLAHPUR, ALLAHABAD, (UP)

MR. KAPIL VAISH
B-51, BUTLER PLAZA, 95,
CIVIL LINES, BAREILLY.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:21.12.2011
Date of decision:21.12.2011

Customs Stay Application Nos.1461, 1462, 1597, 1598, 1599, 1603, 1664, 1815, 1874, 1875, 2512, 2513, 2514 & 2596 in Appeals Nos.247, 248, 269, 270, 271, 273, 283, 316, 322, 323, 471, 472, 473 & 489 of 2011

[Arising out of common Order-in-Appeal No.17/COMM./M-11/2010-11 dated 4.2.2011 passed by the Commissioner of Customs & Central Excise Meerut (U.P.].

M/s.Goel Oil Stores Appellant
M/s. Jeevan Ram Sunil Kumar
M/s.Bhagwan Vanasapati Mills Ltd.
Mrs. Seema Agarwal
Shri H.B. Agarwal
M/s.Balaji Enterprises
M/s.Kumar & Sons
M/s.Jagannath Madan Lal
Shri Sanjeev Agarwal,
Shri Rajeev Agarwal,
M/s. Anil Kumar Sunil Kumar
M/s. Bankey Lal Mohan Lal
M/s. J.K. Enterprises
M/s. Ganga Sales Agency

Vs.

CCE, Meerut-II Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether Order is to be circulated to the Departmental authorities?

Appearance: Rep. by Shri Kamaljeet Singh, Advocate for the appellant.
Rep. by Shri K.K. Jaiswal, SDR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No C/539-552/11 Dated:21.12.2011
Stay order No. C/479-492/11

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of duty confirmed against the M/s. Bhagwan Vanaspati Mills and penalties imposed upon various applicants/appellants, we proceed to dispose of the appeals itself inasmuch as were are convinced that the impugned order stands passed by the Commissioner in violation of principles of natural justice.

2. Briefly stated that the facts of the case are that M/s. Bhagwan Vanaspati Mills Ltd. imported Crude Palm Oil at concessional rate of duty in terms of Notification No.21/2002-Cus. The concessional rate was availed subject to the condition that the imported Crude Palm Oil would be used by the importer as actual user in the manufacture of laundry soap. Detailed procedure stands prescribed in the said notification in terms of Customs (Import of Goods at concessional rate of duty for manufacture of excisable goods) Rules, 1996. As per the said Rules an importer is required to obtain a ~~an~~ registration from the Asstt. Commissioner of Central Excise having jurisdiction over his factory. Thereafter, an application has to be made indicating the estimated quantity and value of the goods to be imported. The said application is required to be countersigned by the officer and thereafter, ~~a~~ manufacturer is required to execute a bond to the satisfaction of the officer. Manufacturer is required to give information regarding receipt of the imported goods and maintenance of the records, which included simple account indicating the quantity and the value of the goods imported, quantity

of the imported goods consumed for the intended purposes and the quantity remaining in stock etc. and end use certificate are required to be produced from the Jurisdictional Officer.

3. The Asstt. Commissioner is required to ensure him that goods are used by the manufacturer for the intended purposes and in case the same are no so used, to take ~~again~~ action to recover the differential duty along with interest starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of difference of duty i.e. liable to pay.

4. As per the Revenue, though the appellant have followed the procedure envisaged in the said Rule and have maintained the records and produced the end use certificate, on the basis of which the bond executed by the importer was subsequently released, ~~and~~ on the basis that the goods were used for the declared intended purpose, the investigation conducted by the Revenue revealed that the invoices showing the procurement of caustic soda, one of the other important raw materials used in the manufacture of laundry soap were found to be fake and fictitious. The appellants have produced the invoices issued by one M/s. Mega Sales. However, the investigations

conducted at the end of M/s. Mega Sales revealed that the same do not form part of the records maintained by M/s. Mega Sales, inasmuch as in some cases, though the appellant was shown as recipient of caustic soda, the second and third copy of the invoices showed another party as recipient of the caustic soda. Statement of Shri Rajiv Singhal, Director of M/s. Mega Sales was also recorded by the Revenue admitting that the entire quantity reflected in the records of M/s. Bhagwan Vanaspati Mills does not stand sold by him. It is also seen that summons were issued for the traders/dealers/procedure of laundry soap manufactured by the appellant. Whereas few of the traders did not respond to the summons, some appeared and accepted having purchased the laundry soaps from the appellant against cash. The entire case of the Revenue resulting in issuance of the show cause notice and consequent confirmation of the demand of duty is based upon the above fact of sale of caustic soda by M/s. Mega Sales, in which case, it is not possible for M/s. Bhagwan Vanaspati to have manufactured laundry soaps, for which purposes, crude palm oil was imported by them. Revenue has accordingly entertained the view that the imported crude palm oil stands sold by the appellant in the open market. Accordingly, differential duty between the concessional rate and the tariff rate stands confirmed by the lower authorities.

5. On the other hand, it is the appellant's contention that they have maintained all the records and have produced the same before the concerned officers, who after verification of the same, has discharged the bond. The allegation made by the Revenue are based solely on the statement of Shri Rajiv Singhal, Director of M/s. Mega Sales, who have sold caustic soda to the appellant. It is the contention of the appellant, through their Advocate, Shri Kamaljeet Singh, that inasmuch as the entire case of the Revenue is based upon the sole statement of Shri Rajiv Singhal, their request for cross examination of the said deponent should have been accepted by the Adjudicating Authority. By drawing our attention to the findings of the Commissioner, he submits that their request stands denied on ~~phalange~~ flimsy ground of the same being made with an intention to delay the proceedings. He also submits that the impugned order stands passed by the Commissioner without there being any reply ~~on the part~~ having been filed by M/s. Bhagwan Vanaspati. He draws our attention to the interim reply filed by them reiterating their request for cross examination and submits that the final

reply could have been filed by them only after the cross examination of Shri Rajiv Singhal.

6. After having appreciated the submissions made by both the sides, we find that Revenue's entire case is based upon the records maintained by M/s. Mega Sales and the statement of Shri Rajiv Singhal, Director of M/s. Mega Sales. The stand of M/s. Mega Sales, as revealed in the statement of Shri Rajiv Singhal is contrary to the stand of M/s. Bhagwan Vanaspati Mills Ltd. whereas M/s. Mega Sales have denied having sold Caustic Soda to the said appellant, the appellant have produced invoices showing the purchase of the same. As per the appellant, even the consideration for Caustic Soda was made to M/s. Mega Sales by cheque. As such, we are of the view that the cross examination of Shri Rajiv Singhal and the important witnesses of the Revenue should have been extended by the Adjudicating Authority. We also note that the reasons adopted by the Adjudicating Authority for denial of cross examination are neither legal nor convincing. For better appreciation, we reproduce para 57 of the impugned order.

> "57. M/s. BVML have also requested for cross examination of Shri Rajiv Singhal, Director, M/s. Mega Sales Pvt. Ltd. alleging that his statement had formed the very basis of the impugned

show cause notice. In this connection, I observe that fact of forged and fake purchase of caustic soda could be detected from the scrutiny & examination of records maintained by M/s. Mega Sales Pvt. Ltd., which was based on records cannot be termed as the sole basis of the show cause notice inasmuch as investigations have also been carried out at the dealers' end who had so to say purchased soap and sold the same in cash, and have also been made the basis of the SCN. I further observe that M/s. BVML had not supplied the records/documents which included details of payment made to M/s. Mega Sales against purchase of caustic soda for year 2005-06. The request dated 18.10.2010 made by M/s. BVML to cross examine the notice number 02 i.e. M/s. Mega Sales Pvt. Ltd., Ghaziabad is nothing but only a tactic to gain more and more time and linger on the proceedings of the case. In fact M/s. BVML or Shri Piyush Kumar, Advocate have not adduced any evidence/ documents to point out any infirmity /discrepancy in the records of M/s. Mega Sales referred to in the SCN in support of their defence and to justify the need for cross examination, I observe that their request for cross examination is not justified and has no force in it."

7. The first reason for denial of the cross examination adopted by the Adjudicating Authority is that the statement of Shri Rajiv Singhal is not the sole basis of the show cause notice inasmuch as the dealers have admitted having purchased soaps in cash. We really failed to understand as to how the above fact of the dealers having purchased and sold the soaps in cash can be held to be prejudiced to the appellant. In fact the same supports their stand that laundry soap stands manufactured and sold by them to the dealers. In any case, the said fact cannot be adopted as a ground for denial of cross examination of Shri Rajiv Singhal. Further, the Adjudicating Authority has observed that the said appellant has not supplied the records/documents including the details of the payment made to M/s. Mega Sales. Apart from the fact that the appellant had not filed any reply to the notice and as such could not produce any records/documents, including the details of the payment made by them to M/s. Mega Sales, we observe that the said reason, in any case, cannot be adopted as a ground for denial of cross examination of Shri Rajiv Singhal. Further observation of the Adjudicating Authority that cross examination request is nothing but a tactic to gain more and more time cannot be appreciated, inasmuch as it is right of the noticee, in appropriate

cases, to ~~argue~~ ask for the cross examination of the deponent, whose statement is being strongly relied upon by the Revenue, against the noticee. Inasmuch as in the instant case, we find that the entire case of the Revenue is mainly based upon the records of M/s. Mega Sales and the statement of Shri Rajiv Singhal, as regards the non-sale of the Caustic Soda, one of the main raw materials, to be used in the manufacture of laundry soap along with Crude Palm Oil, the appellant should be given an opportunity to cross examine the said Shri Rajiv Singhal. We order accordingly. After the conclusion of the cross examination, the appellant would file the reply to the notice within a period of 15 days therefrom and after affording an opportunity of personal hearing, the Commissioner would pass the order as soon as possible. All the stay petitions and appeals get disposed of in the above manner.

[order dictated & pronounced in open court]

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.