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

Appeal No. E/1618/2005 - EX[DB] Date **08/08/2011**

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

To :
M/S DHARAMPAL PREMCHAND LTD.
A-3,S.M.A, INDUSTRIAL CO-OPERATIVE ESTATE,
G.T.KARNAL ROAD, DELHI

M/S DHARAMPAL PREMCHAND LTD. Appellant

Vs

C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order** No.699/ 2011 **EX|DB|** dated 04-8-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult SH. T.R. RUSTAGI, ADV,
SD-84, TOWER APARTMENTS,
PITAMPURA, DELHI-34

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
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 1618 of 2005

[Arising out of Order-in-Appeal No. 20/CE/DLH/2005 dated 8.2.2005 passed by the Commissioner of Central Excise (Appeals), Delhi I]

For approval and signature:

Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Mr. M.V. Ravindran, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

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M/s. Dharampal Premchand Ltd. — Appellants

Vs.

Commissioner of Central Excise
Delhi I — Respondent

Appearance:

Shri T.R. Rustogi, Advocate for the Appellants
Shri R.K. Verma, DR for the Respondent

CORAM: Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Date of Hearing/decision : 21.7.2011

FINAL **ORAL ORDER NO. 699/2011-EX**

Per M.V. Ravindran (for the Bench):

This appeal is directed against the order in appeal No. 20/CE/DLH/2005 dated 8.2.2005.

2. The relevant facts that arose for consideration are that the appellants herein are registered with Central Excise for manufacture of zarda, chewing tobacco and were availing modvat facility. On visit to the factory of the premises, the Central Excise officers found cut tobacco weighing 609 Kgs. and packing material i.e. tins in excess of the recorded balance in the Cenvat statutory records. On a reasonable belief that the said goods are finished goods and packing materials, are liable for confiscation, goods were seized by the panchnama dated 8.6.2001. Statement of authorised signatory was also recorded. A show cause notice dated 6.12.2001 was issued for confiscation of the said cut tobacco and the packing material under Rule 173 Q of Central Excise Rules 1944 and for denial of modvat credit on the packing material i.e. tins which was found in excess. The appellants contested the show cause notice before the adjudicating authority. The adjudicating authority confiscated the goods which were seized and allowed them to be redeemed on payment of redemption fine and Modvat credit was sought to be reversed and duty demanded on cut tobacco, and penalty was also imposed. Aggrieved by such order in original, the appellant preferred the appeal before the Commissioner

(Appeals). The Commissioner (Appeals) also did not accept their contention and rejected the appeal.

3. Learned Advocate Shri T.R. Rustogi, appearing for the appellant would draw our attention to the findings recorded by the learned Commissioner (Appeals). He would also draw attention to the panchnama drawn and statement recorded and the show cause notice. He would submit that the cut tobacco which was found in excess was confiscated on the ground that they have not been recorded in the RG I register. It is his submission that the appellants are manufacturing final product which is chewing tobacco and cut tobacco is not chewing tobacco. It is his submission that cut tobacco was tobacco which was remnant after manufacturing activity and hence need not be accounted in the RG register as they are not finished goods. As regards the denial of Cenvat credit on the packing material i.e. tins, it is his submission that the goods were found in excess and the demand of the Cenvat credit has been worked out based upon the presumptions and in a manner which is incorrect. It is his submission that there is no provision for reversal of Cenvat credit, which can be demanded on the inputs which were found in excess in the factory premises.

4. Learned DR reiterates the findings of the learned Commissioner (Appeals).

5. Considered the submissions made by both sides and perused the records.

6. It is not in dispute that the goods which were seized vide panchnama were cut tobacco, metal tins, caps, laminated pouches and aluminium lids. It is also not in dispute that except for cut tobacco, on all other items, the Cenvat credit was availed as packing material. It is also undisputed fact that the appellant is registered with Central Excise for manufacturing of chewing tobacco.

7. It can be seen that both the lower authorities have mis-directed their findings without appreciating the correct provisions of law.

8. The learned Commissioner (Appeals) while rejecting the appeals filed by the appellants have recorded the following findings:

> "5. I have gone through the facts of the case and various submissions made by the appellant. I find that the cut tobacco weighting 609 Kgs. was found in excess of the RG I register meant only for finished and excisable goods and not for non-excisable goods and the plea of the appellant at this stage that the same were not excisable goods does not hold good and is not sustainable. Regarding the plea of the appellant that the inputs found in excess were from the stock of non-modvatable inputs which existed prior to 1.03.2000 is also not tenable in view of the fact that Modvatable and non-modvatable inputs cannot be identified after a lapse of more than one year. It cannot also be presumed that the inputs which were declared on 1.03.2000 when the appellant at the first time opted for the modvat scheme, were not subjected to the process of manufacture even after a lapse of more than one year when the officers of central excise visited the appellant's premises. They did not adduce any reason for storage of the said stock for so long. The appellant has also attempted to demonstrate and justify this plea with reference to the photocopies of their private stock register which can not be

> considered more authentic than the central excise statutory records to be maintained properly by the appellant in accordance with Rules ibid. It is further observed that the inputs were found in excess of the recorded balance in the RG 23 Part I register meant for modvatable inputs. No other evidence has been brought on record by the appellant that the said inputs were purchased against some non-modvatable invoices and Modvat Credit has not been availed on the said inputs found in excess in their factory. Since the goods in question were found in excess of the recorded balance in the Central Excise Records, the goods were correctly confiscated by the adjudicating authority. "

It can be seen from the above reproduced findings that the learned Commissioner (Appeals) has considered the cut tobacco weighing about 609 Kg. as finished goods. On perusal of the panchnama, we find that panchnama talks about "cut tobacco" which were indicated as not finished goods manufactured by the appellants, but as raw material. There cannot be any second opinion on the contentions raised by the learned Counsel, that in RG I register, record is to be ~~maintqined~~ maintained of manufactured finished goods/excisable goods. If it is admitted fact that the goods which were found in excess were cut tobacco (as per panchnama) then there is no need to account them in the RG I register. In view of this, confiscation and demand of duty on 609 Kgs. of cut tobacco does not seems to be in accordance with the law. The demand is unsustainable, hence demand and confiscation on such cut tobacco are set aside.

9. As regards the demand of duty and confiscation for the packing material found in excess, we find that there is no dispute that these

goods were found in excess than the recorded balance in the statutory records like RG 23 A Part I. There is no allegation that packing materials were removed from the factory premises on which Cenvat credit was availed. It cannot be so, as the goods were found in excess. We also find that there is no provisions in the Rules which indicate to re-calculate the amount of Cenvat credit attributable to the excess goods found in the factory premises and raise a demand. In our considered view, the Cenvat credit reversal on the packing material could have been correct if they have been found short than the recorded balance.

10. In view of the foregoing, we are of the considered view that the impugned order is not sustainable and is liable to be set aside and we do so.

11. The impugned order is set aside and the appeal is allowed

(Dr. C. Satapathy)
Technical Member

(M.V. Ravindran)
Member (Judicial)

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