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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/2237/2005-2239/2005 - EX[DB] Date **23/08/2011**

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

To :
M/S RAGHUNATH INTERNATIONAL LTD.
84/12 FACTORY AREA FAZAL GANJ KANPUR U.P

M/S RAGHUNATH INTERNATIONAL LTD. Appellant
Vs
C.C.E.KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.**749-751/ **2011 EX[DB]** dated 12-8-11 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.KANPUR
117/7 SARVODAYA NAGAR
KANPUR

2. Adv. / Consult
MR.A.K.JAIN,
"ABHINANDAN FARM" BEHIND CHIRANJIV BHARTI SCHOOL PALAM VIHAR,
GURGAON(HARYANA),122017

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 (Harvana)
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
14. SH. RAJESH DIXIT, C/O.
M/S RAGHUNATH INTERNATIONAL LTD.
84/12,FACTORY AREA,FAZAL GANJ , KANPUR
15. SH. RAJESH AGARWAL, C/O.
M/S RAGHUNATH INTERNATIONAL LTD.
84/12 FACTORY AREA FAZAL GANJ KANPUR

Assistant Registrar
(Excise Appeal Branch)

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

COURT NO. I
Excise Appeal No. 2237-2239 of 2005

[Arising out of the Order-in-Appeal No.244-246/CE/APPL/KNP/05, dated 28.04.05 passed by The Commissioner (Appeals), Central Excise & Service Tax, Kanpur.]

For Approval and signature :
Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would 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 Department Authorities?	:

(1) M/s. Raghunath International Ltd. — Appellants
(2) Shri Rajesh Dixit
(3) Shri Rajesh Agrawal

Versus

CCE, Kanpur — Respondent

Appearance

Shri Vinod, Clerk of the Advocate – for the appellant.
Shri S.R.Meena, SDR – for the appellant.

CORAM :
Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 12.07.2011

Final Order No. 749-751/2011-Ex Dated : 12/8/11

Per Rakesh Kumar :

The facts leading to these appeals are, in brief, as under :-

1.1 M/s Raghunath International Ltd. (herein after referred to as appellant company) are engaged in manufacture of Pan Masala, Pan Masala containing Tobacco (Gutka), branded chewing tobacco and Meetha Masala under brand name Sir, which are chargeable for Central Excise duty under sub-heading 2106.00, 2404.49, 2404.47 and 2108.99 respectively of the Central Excise Tariff. Both Shri Rajesh Agrawal and Shri Rajesh Dixit are the authorised representatives of the appellant company. The appellant company's factory was visited by the jurisdictional Central Excise officers on 29.05.03. At that time the officers checked the stock of raw materials as well as finished products. They found shortage of 6187 kg. of Supari and also shortage of Lamination, containers and Zippers in respect of which Cenvat Credit amounting to Rs.40,022/- had been taken. Though at that time excess stock of finished products - Gutka and Pan Masala was also found which were over and above the recorded balances in the RG-1 register, and the same were placed under seizure, for excess stock of finished goods, a separate Show Cause Notice has been issued and the same is not the subject matter of these proceedings. On the basis of shortage of 6187 kg. of Supari, the Department alleged that the same had been used in the manufacture of 8250 kg. of Gutaka involving the duty of Rs.12,37,500/- which had been cleared clandestinely without payment of duty. Similarly on the basis of shortage of Lamination and packaging material, the Department alleged manufacture of unaccounted Gutka involving duty of Rs.1,53,239/- cleared without payment of duty and also the wrong availment of Cenvat Credit of Rs.40,022/-. On this basis, after issue of a Show Cause Notice, the Jt. Commissioner vide Order-In-Original dated 20.01.05 confirmed the duty demands of Rs.12,37,500/- and Rs.1,53,239/- against the appellant company along with interest, the Cenvat Credit demand of Rs.40,022/- along with interest and imposed penalty of Rs.14,30,761/- (Rs.12,37,500+Rs.1,53,239+Rs.40,022) on the appellant company under section 11AC of the Central Excise Act, 1944 and also penalty of Rs.5,000/- and Rs.2,000/- on Shri Rajesh Agrawal and Shri Rajesh Dixit respectively under Rule 26 of Central Excise Rules, 2004. On appeal to Commissioner(Appeals), the Commissioner(Appeals) vide Order-In-Appeal dated 28.04.05 set aside the duty demand of Rs.12,37,500/- and also the penalty of equal amount but upheld the duty demand of Rs.1,53,239/- and Cenvat Credit demand of Rs.40,022/- and also reduced the penalty on the appellant company to Rs.1,40,000/-. The penalty on Shri Rajesh Dixit and Shri Rajesh Agrawal, however, was upheld. Against this order of the Commissioner(Appeals), the present appeals have been filed.

2. Heard both the sides. At the time of hearing, Shri Vinod, Clerk of the Counsel representing the Appellants appeared and filed Written Submissions on behalf of Appellants with request for deciding the matter on the basis of same.

2.1. In the Written Submissions of the Appellants, it was pleaded that the duty demand of Rs.1,53,239/- is based on the shortages of various varieties of Laminates and Zippers, that just on the basis of shortage of Laminates and Zippers, it cannot be presumed that the same had been used in the manufacture of Gutka cleared without payment of duty as at the time of stock checking no shortage was found in the stock of raw material namely Kattha, lime power, Tobacco, Cardamom which are also necessary raw materials required for manufacture of Gutka, that in respect of Supari, the Commissioner(Appeals) in the impugned order has held that there was no shortage, that no evidence of clandestinely clearances has been provided, that shortage of Zippers and Laminates was due to wastage as in course of packing of Gutka pouches waste does occur, that for the same reason, it is incorrect to demand the Cenvat Credit of Rs.40,022/- in respect of shortage of Laminates and Zippers on the presumption that the same had been cleared without reversal of the Cenvat Credit, that there is no justification for penalty under Rule 26 of Central Excise Rules, 1944 on Shri Rajesh Dixit and Shri Rajesh Agrawal and that in view of this the impugned order upholding the duty demand of Rs.1,53,439/- Cenvat Credit demand of Rs.40,022/-, imposition penalty on the

Appellant Company under section 11AC and penalty under Rule 26 on authorised signatories, is correct.

2.2. Shri S.R.Meena, Ld. SDR defended the impugned order by reiterating the findings of the Commissioner(Appeals) in the impugned order.

3. We have carefully considered the submissions from both the sides and perused the records. The duty demand of Rs.1,53,239/- on alleged manufacture and clearance of Gutka and the Cenvat Credit demand of of Rs.40,022/- is based on shortage of Lamination and Zippers. The appellant's contention is that the shortage of these items – Laminates containing and Zippers is due to wastage which in the process of manufacture of Gutka, is inevitable and that in absence of shortage of other ingredients of Gutka, Supari, lime, Kattha, Tobacco etc. and just on the basis of shortage of Laminates containing and Zippers, it cannot be presumed that the missing Laminates containing and Zippers had been used for manufacture of Gutka cleared clandestinely without payment of duty.

4. So far as Supari is concerned, which comprises of about 75% of weight, the Commissioner(Appeals) in the impugned order has held that there was no shortage of Supari and the allegation of 6187 kg of Supari is not sustainable. There is no allegation or evidence of shortage of other raw materials like tobacco, Kattha, lime, menthol etc. Therefore, we are inclined to to agree with the appellant's plea that just on the basis of shortage of Lamination material containing and Zippers, it cannot be

presumed that the missing material had been used for manufacture of unaccounted Gutka cleared clandestinely without payment of duty. In view of this, duty demand of Rs.1,53,239/- is not sustainable.

5. As regards the Cenvat Credit demand of Rs.40,022/-, the same is in respect of Cenvat Credit availed Lamination materials and Zippers found short. Though the appellant's plea that this may be due to wastage, as rightly observed by the Commissioner (Appeals) if it was waste, it must have been accounted in the books of accounts but no evidence in this regard have been produced. The shortage of Cenvat Credit availed on Lamination and Zippers maybe due to short receipt of the same. We, therefore, upheld the Cenvat Credit demand of Rs.40,022/- along with interest

6. Since only the Cenvat Credit demand of Rs.40,022/- survives the penalty on the appellant is reduced to Rs.20,000/-.

7. As regards the penalty under Rule 26 of Central Excise Rules on Shri Rajesh Dixit and Shri Rajesh Agrawal, no evidence has been produced by the Department that they were involved in acquiring possession of or in transporting, removing, selling or purchasing of any excisable goods or in any other manner dealing with excisable goods, which they knew or had reason to believe ~~was~~ were liable for confiscation. Just for wrong availment of Cenvat Credit of Rs.40,022/- by the appellant company ~~and~~ penalty under Rule 26 on its authorised signatories would not be justified. In view of this, penalty on Shri Rajesh Dixit and Shri

Rajesh Agrawal, authorised signatories of the appellant company is liable to be set aside.

8. In view of the above discussion, while the Commissioner(Appeals)'s order with regard to Cenvat Credit demand of Rs.40,022/- along with interest is upheld, duty demand of Rs.1,53,239/- is set aside and penalty on the appellant company under is reduced to Rs.20,000/-. The appeal of the Appellant company is thus partly allowed.

9. The penalty on Shri Rajesh Dixit and Shri Rajesh Agrawal, the authorised signatories of the Appellant company is set aside and accordingly appeals filed by them are allowed.

(Pronounced in open court on 12/8/11)

(Justice R.M.S.Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

RK-I