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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/2273/2005-2274/2005 - EX[DB]

Date **17/02/2012**

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I Appellant

Vs

M/S THREE N PRODUCTS PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/171-172/ 2012 EX[DB]** dated 15-2-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S THREE N PRODUCTS PVT.LTD.
H-301 INDUSTRIAL AREA PHASE-I,BHIWADI DISTT.ALWAR
RAJASTHAN

2. Adv. / Consult MS. ASMITA A. NAYAK, ADV.,
NO. D/619, 1ST FLOOR, C.R.PARK
MARKET NO. 2, N.DELHI-19

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-3
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/Appeal Nos.2273-2274/2005

(Arising out of order in appeal No.105-108/MPM/CE/JPR.1/05 dated 20.4.05 passed by the Commissioner of Customs & Central Excise(Appeals), Jaipur)

Date of Hearing: 9.2.2012

For Approval and signature:

Hon'ble Mr Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters 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?	Yes
3.	Whether their lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

CCE, Jaipur-I — Appellant

Vs

M/s Three N Products Pvt Ltd — Respondent

Appeared for the Appellant: Smt. Renu, AR
Appeared for the Respondent: Ms. Asmita Nayak, Advocate

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

FINAL ORDER No. A/171-172/2012-EX(BR)

Per Mathew John:

The Respondents are engaged in the manufacture of Herbal cream and Shampoo falling under Headings 33.04 and 33.05 of the Central Excise Tariff. The manufacturing process for these products is carried out in batches of 1200/2400 Kgs and 1200/4800 Lts respectively. Revenue checked the production records and RG-1 Register of the company during the period 2002-03 and found that there is a shortage of approximately 1% in the quantity of goods accounted in RG-1 register in packed form as compared to the quantity accounted to be produced in the batch register. Revenue alleged that the difference in such quantity is on account of clandestine removal of the goods and issued a Show Cause Notice demanding duty on such goods supposed to have been cleared without payment of duty.

2. The SCN was adjudicated confirming duty demand of Rs.27,42,812/- along with interest. Further penalty equal to the said amount was imposed on the Respondent under section 11AC of the Act and a penalty of Rs.14,00,000/- was imposed on the Manager of the company under Rule 26 of CER 2002. Aggrieved by the order the Respondent filed an appeal before the Commissioner (Appeal). The Commissioner (Appeal) accepted the plea of the Respondents that the difference is due to various factors like slightly excess quantity packed in each retail packet than the quantity printed on such packets, spillage of the goods during packing, evaporation and errors in the calculation of the department by not taking the goods lying in process. Aggrieved by the order of the Commissioner (Appeal) Revenue has filed this appeal.

3. The submission of the Ld. AR for Revenue is that if the quantity packed in retail packs was more than the quantity declared on the packs then also there is case of removal of goods without accounting, The argument of the Respondent that the excess quantity was supplied by way of quantity discount is not tenable because discounts can be allowed for excise purpose if such discounts were made known to the consumers which was clearly not the case here.

4. The Counsel for the Respondents submit it is almost impossible to achieve exact match between goods accounted in bulk stage and goods accounted in retail packet stage. A part of the product is lost due to evaporation and also due to spillage.

Further to maintain the reputation of the brand and also to meet the strict rules under the Weights and Measurements Act they wanted to ensure the quantity packed in the retail pack is not less than what is declared. This was achieved by filling slightly excess quantity in each pack. Since the MRP is fixed taking into account such practices and the excise levy is on the basis of MRP declared and not on the basis of quantity cleared there is no loss of revenue caused. He submits that Revenue has not produced any evidence of clandestine clearance at all and hence the case made against them is not maintainable.

5. We have considered the arguments on both sides. We see merit in the arguments of the Respondents. It is not possible to achieve exact match between goods accounted in bulk and goods accounted in packed condition. We note that the percentage difference detected is very minimal. Further in almost all commodities the manufacturers who want to maintain their reputation is likely to adopt practices by which the quantity n the retail pack is not less than what is declared on the pack. Since the assessment is based on MRP of the product this does not result in any revenue loss. This type of cases cannot be sustained without proof of clandestine removal and no such proof has been adduced.

6. For reason stated above, we do not see any merit in the appeals filed by Revenue and hence the appeals are rejected.

(Pronounced in Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

MPS*