

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

Date **27/02/2012**

Appeal No. E/1799/2011 - EX[DB]
E/S/2378/2011-EX

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

To :
INTERNATIONAL TOBACCO CO, LTD.
MEERUT ROAD, GULDHAR, GHAZIABAD.
INTERNATIONAL TOBACCO CO, LTD.

Appellant
Vs
Respondent

C.C.E. GHAZIABAD

STAY ORDER NO. 353/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/224/** **2012 EX[DB]** dated 23-2-12
passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**

b h
Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302

2. Adv. / Consult *SH. A. SAGAR, ADV.,*
C/O APPELLANT.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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

b h
Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH
Court No.3

E/Stay/2378/2011 in Appeal No.E/1799/2011

(Arising out of OIA No.265-CE/GZB/2011 dt.31.3.11 passed by the
CCE(A), Ghaziabad)

Date of Hearing/Decision: 16.02.2012

For approval and signature:

Hon'ble Mrs.Archana Wadhwa, Member (Judicial)

Hon'ble Mr.Mathew John, 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?	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?	See
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s. International Tobacco Co.Ltd.

Appellant

Vs

CCE, Ghaziabad

Respondent

Present for the Appellant: Shri A.Sagar, Advocate

Present for the Respondent: Shri Sunil Kumar, AR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)

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

STAY ORDER No. 353/2012-EX LBR)
FINAL ORDER NO. A/224/2012-EX LBR,

PER: ARCHANA WADHWA

After dispensing with condition of pre-deposit of duty of
Rs.52,211/- and penalty of identical amount, we proceed to decide
the appeal itself as the issue is covered by the decision of Hon'ble

Supreme Court in the case of ITC Ltd. vs. CCE, Patna-2003)151) ELT 246 (SC).

2. The appellants are engaged in the manufacture of cigarettes. They are also sending the cigarettes for testing moisture to their laboratory situated inside the factory. No duty was paid on the quantum of cigarettes sent for testing. The demand stands raised and confirmed in respect of such destroyed cigarettes.

3. We find that Hon'ble Supreme Court in the case of ITC Ltd. while observing that ----- *"coming now to the second question, it may be stated that the learned Counsel appearing on behalf of the Revenue could not dispute the proposition that the quality of cigarette sticks that is destroyed in the course of quality control test is not liable to excise duty."* Hon'ble Supreme further observed that ~~he however, submitted~~ there is no evidence of any quantum of cigarettes which were destroyed in the process of quality control test for which no accounts were being maintained by the appellant. Applying the ratio to the facts of the present case, we find that the Commissioner (Appeals) has called for the report from the appellant's jurisdictional Central Excise Authorities, which is to the following effect:

"It has been observed by this office that although the party has maintained a shift wise (for A & B shifts) record with regard to the receipt of completely manufactured cigarettes/cigarette packets in the factory's in-house quality control laboratory from production floor meant for "Moisture Test" but no where it has been shown as to how

much quantity received in laboratory was destroyed during the course of quality control tests."

4. As is seen from the above report, the appellants have maintained records for receipt of the cigarettes in the in-house quality control laboratory, which were meant for moisture test. The benefit is being denied on the ground that no further records have been maintained at the laboratory showing quantum of the cigarettes destroyed in the test. It is the appellant's contention that the entire cigarettes which ~~were~~^{are} sent for moisture test gets destroyed in the test and there is no need for maintenance of records.

5. Learned Advocate appearing for the appellant further submits that the appellants are paying duty on their final products ~~as around~~^{amounting} to Rs.2.5 crores per day and as such, there could be no intention on their part to show excess destruction in the quality control laboratory so as to avoid small amount of duty. The duty confirmed in the present appeal pertain to the period March,08 to November, 08. He submits that keeping in view the facts and circumstances of the case, the benefit cannot be denied ~~mere~~^{merely} on the ground that no records of destruction of cigarettes in the laboratory were maintained.

6. We agree with the contention of the learned Advocate. Admittedly in terms of observation made by the Supreme Court in the case of ITC, the cigarettes meant for quality control test are not liable to duty. It is also on record that cigarettes being sent to the laboratory are being recorded in the statutory records. Mere non maintenance of the destroyed quantity of cigarettes in the laboratory

when the appellants are claiming that 100% destructions were made cannot be made the ground for denial of the benefit. It is not the Revenue's case that some cigarettes sent to the laboratory are ultimately cleared from the factory. We do not find any merit in the impugned order confirming the demand against the appellant and the same is accordingly set aside. The stay petition as also appeals gets disposed in the above manners.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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