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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/3309/2009 - EX[DB] WITH E/S/3384/2009-EX Date **18/01/2012**

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

To :
M/S. AJANTA OFFSET & PACKAGING LTD.
PLOT NO.61, SECTOR-27A, FARIDABAD

M/S. AJANTA OFFSET & PACKAGING LTD. Appellant

Vs

C.C.E. DELHI IV **STAY ORDER NO. 77/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/26/ 2012 EX[DB]** dated 09-1-12 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 IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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)

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

Date of Hearing : 14.12.2011

Excise Stay No. 3384 of 2009 and Excise Appeal No. 3309 of 2009

[Arising out of Order-in-Original No. 43/NS/Adjn/09 dated 22.9.2009 passed by the Commissioner of Central Excise, Delhi-IV)

Coram:
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter 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?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s Ajanta Offset & Packagings Ltd. Appellant

Vs.

CCE, Faridabad Respondent

Appearance:

Appeared for Appellant : Shri A. Mahdav Rao, Advocate
Appeared for Respondent : Shri B.K. Singh, A.R.

CORAM: Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

STAY order No: 77/2012-EX (BR)
FINAL Order No. A/26/2012-EX(BR).dated............

Per Mathew John :

The Appellants are engaged in manufacturing of Books, Diaries, Notepad etc for export. During the period April 07 to Feb 08 they obtained inputs like paper, paperboard, ink, plates etc, without payment of duty against advance license, for manufacture of their final products. For this they had followed procedure as per the provisions of Notification 34/2001-CE (NT) dated 21-06-2001 read with Notification 44/2001 CE (NT) dated 26-0-2001, which prescribe the procedure to be followed for Removal of Goods at Concessional Rate of Duty. It appears that imported raw material was procured duty free against Advance License Scheme and indigenous raw materials were obtained without payment of duty by invalidation of corresponding quantity from Advance License. However the case records do not bring out these two categories of inputs or the actual exemption notification that was availed.

2. On 25-03-08 the officers of Central Excise department conducted a surprise check at the factory of the appellants and found that the physical stock of inputs in stock (the exact item for which shortage was detected also is not quite clear from the impugned order) was far too short of the stock which should have been available as per their books of accounts. The officers recorded the stock available by a panchanama drawn on that day and they also recovered the books of accounts of the Appellants. Shri. K. K. Aggarwal, The Director and authorized representative of the appellant who was present could not explain the reasons for the shortage and he admitted that there was a shortage of 3011.228 MT of inputs. However, he did mention that they have a godown in Central Warehousing Corporation Ltd, Faridabad as recorded in para 19 of the impugned order. Since it appeared that the inputs procured without payment of duty was diverted for uses other than the manufacture of export goods, a Show Cause Notice demanding Central Excise duty of Rs. 1,31,44,010/- along with interest was issued. Further penalty under section 11AC was proposed. On adjudication duty demand of Rs. 1,31,44,010/- was confirmed along with interest. Further penalty equal to the duty demand was imposed under section 11AC of the Act. Aggrieved by this order the Appellants have filed this appeal.

3. The Counsel for the appellants submits that the shortage of goods detected by Revenue was on account of simple arithmetical

errors, committed by one inept employee of the company, in the monthly returns filed by the appellants and they had filed revised returns for the months in which such mistakes occurred. If such revised returns are taken into account and a quantity of 465.393 MT lying in their godown at Central Warehousing Corporation, C/o Hindustan Lever Ltd, N.H-II NIT Faridabad, Godown 4B was also taken into account there was no shortage at all. They point out that they had explained this position to the adjudicating authority.

4. In the Show Cause Notice, shortage was worked out with reference to the monthly returns filed by the appellants as per Annexure-F to the SCN. The appellants explained the difference showing how the shortage appeared on account of the simple arithmetical mistakes like closing balance for one month not being taken as the opening balance for the next month. When the position was thus explained the adjudicating officer decided shortage on the basis of Material Receipt Register without putting the Appellants to notice because of which they did not get opportunity to explain the difference as calculated by the adjudicating authority with reference to Material Receipt Register. The Counsel submits that this Register shows receipt of both duty paid raw material and non-duty paid raw material and the adjudicating authority has made fundamental error in working out shortage of quantity of non-duty paid raw material by assuming that all entries in the register relate to non-duty paid goods and travelled beyond the scope of the SCN by relying on a new register.

5. The Ld. AR for Revenue points out the fact that at the time of search in the factory their Director Shr. K. K. Aggarwal had admitted the shortage and he did not have any explanation. Further he points out that no permission was taken by the Appellant to store such non-duty paid goods outside their factory. He submits that the explanation given later is just a cooked up explanation.

6. We have considered the arguments on both sides. We find from para 19 of the impugned order that the Director had on 25-03-2008 itself stated about the godown at 14/7 Mathura Road and

the stock of goods with Central Warehousing Corporation. So this submission cannot be brushed aside as mere afterthought. Further if the goods were in the premises of Central Warehousing Corporation it can most probably be verified with reference to records maintained by the warehouse. If the goods were indeed there, the matter just boils down to not having taken the permission and the consequences may be different.

7. Further we find merit in the submission of the appellant that they did not have an opportunity to rebut the inferences being drawn by the adjudicating authority with reference to the Material Receipt Register because such discrepancy is being thrown at them through the adjudication order for the first time.

8. However we are prima facie not in agreement with the argument that the adjudication is beyond the SCN. When discrepancies pointed out with reference to their returns are explained as arithmetical errors, the adjudicating authority had the freedom to look at their registers itself based on which returns are compiled. We do not consider this to be going beyond the SCN. But the issue is that ~~we~~ when adjudicating authority was drawing adverse inference having regard to some other document, the appellant should have been given an opportunity to explain the discrepancy as appearing with reference to that register. To this extent the principles of natural justice has not been complied with.

9. Having come to the above conclusion we consider it proper to waive the pre-deposit of dues arising from the order for admission of the appeal. Further since we find that no useful purpose will be served by keeping the appeal pending in Tribunal we set aside the impugned order and remit the matter to the adjudicating authority for de-novo consideration of the matter after hearing the explanation of the appellants with reference to the Material Receipt Register or any other register that the adjudicating authority wants to rely on. Needless to say that if any other document is relied upon, the appellant should be specifically put on notice and their explanation heard.

10. Thus the stay petition is allowed and further appeal itself is allowed by setting aside the order and remitting the matter for de-novo consideration by adjudicating authority.

(Pronounced in Court)

(S. S. Kang)
Vice President

(Mathew John)
Member (Technical

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