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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/2066-2067/2005-EX[DB]

Dated: **05/10/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E.ROHTAK HARYANA
17-P,Sector-1 Rohtak Haryana

C.C.E.ROHTAK HARYANA (Appellant)

VS

SHIVA KATTHA PVT.LTD. (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1200-1201/2012-EX[DB]** dated **20/09/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. **Respondent**
SHIVA KATTHA PVT.LTD.
58 K.M.Stone Delhi Rohtak Road
P.O.Ismlila Distt Rohtak

2. **Advocate(s) / Consultant(s):** SH. O. P. BATHLA, CONS.
MD57, ELDECO MANSIONS
SECTOR-48, SOHNA ROAD,
GURGAON

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. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

15. M/S. SWASTIK KATTHA (P) LTD.
58 K.M. STONE, DELHI-ROHTAK
ROAD, P.O. ISAMILA, DISTT. ROHTAK

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. III

DATE OF HEARING : 20/09/2012.
DATE OF DECISION : 20/09/2012.

Excise Appeal No. 2066-2067 of 2005

[Arising out of the Order-in-Appeal No. 127 and 126/AKG/RTK/2005 dated 17/03/2005 passed by The Commissioner Central Excise (Appeals), Delhi – III, Gurgaon.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri 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?	:	No
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 Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	Yes

CCE, Rohtak — Appellant

Versus

M/s Swastik Katha (P) Ltd.]
M/s Shiva Katha (P) Ltd.] — Respondents

Appearance

Shri M.S. Negi, Authorized Representative (DR) – for the appellant.

Shri O.P. Bathla, Consultant – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/1200-1201/12-EX(BR) Dated : ____________

Per. Archana Wadhwa :-

Being aggrieved with that part of the impugned order of Commissioner (Appeals) vide which he has set aside the penalty imposed upon the respondent, Revenue has filed the present appeals.

2. After hearing both the sides, we find that the respondents are engaged in the manufacture of Katha and Cutch. They were small scale unit, availing the benefit of small scale exemption notification and were not paying any duty on Cutch. Katha was exempted from payment of duty vide Notification No. 76/1986-CE.

3. Their factory was visited by the officers on 23rd September, 2003 and after verifications, it was found that the respondent had exceeded the eligibility criteria of Rs. 3,00,00,000/- (Rupees Three Crores) in the preceding financial year so as to be entitled to small scale exemption notification. As a result, they were required to pay duty on Cutch right from the first clearances. On being brought the above-mentioned position to their notice, the respondent agreed to deposit the duty alongwith interest. The duty was actually deposited by them in both the cases alongwith interest.

4. On the above basis, proceedings were initiated for imposition of penalty upon them which culminated into orders

passed by original Adjudicating Authority. On appeal, Commissioner (Appeals) set aside the same by observing as under :-

> "5.6 It has also been added that it was a dispute involving interpretation of legal provisions, and no malafide was involved on the part of appellant, and, therefore, also the penalty was not imposable in view of the decisions of Hon'ble Tribunal reported at **2004 (172) E.L.T. 495 (T), 2004 (172) E.L.T. 366 (T)** and **2004 (64) R.L.T. 667 (T)**. On a careful deliberation of facts, I find that the appellant, for having never paid the duty earlier on Cutch, was persisting in a belief that the product did not attract Central Excise levy, and such belief must fall in the category of bonafide belief. The facts also unfold that the appellant had paid the duty and interest as soon as pointed out. I, therefore, find a force in foregoing contention of the appellant, and as the relied upon case laws also support the case of the appellant, I infer that the penalty imposed on the appellant vide the impugned order is not legally sustainable. As such, I set aside the penalty imposed on the appellant vide the impugned order".

5. As is seen from above, the dispute between the Revenue and the assessee is as regards the legal interpretation of the notifications and not in respect of any clandestine activities. As the appellant had not paying duty on Cutch, and as the Katha was exempted otherwise, they may not be aware of their duty liability in respect of Cutch on a reasonable belief that the value of clearance of the same was falling within the small scale exemption notification. As such, accepting the Revenue stand

that it is the clearance of all the excisable goods during the preceding financial year, which has to be taken into consideration for the purpose of entitlement of small scale notification, they deposited the duty immediately alongwith interest. As such, we fully agree with the reasoning of Commissioner (Appeals) that in such circumstances, no penal action was required to be taken against the respondent. Accordingly, the impugned order is upheld by rejecting both the appeals of the Revenue.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK