

# Bimal Jain

FCA, FCS, LLB, B. Com (Hons)

- [Merely on the basis of papers/documents found from residence of Director/Employee, it cannot be concluded that the company has removed goods without payment of duty](#)

*Sun Ultra Technologies Pvt. Ltd., Shri Sunil Gandhi, MD, Shri Girish Mathur, Prop Vs. Commissioner of Central Excise, Indore [2016-TIOL-161-CESTAT-DEL]*

## **Facts:**

Sun Ultra Technologies Pvt. Ltd. (“**the Appellant**”) was engaged in the manufacturing of welding rods under the brand name of another person. Arhat is a proprietorship firm owned by the father of director of the Appellant, who was also engaged in the manufacture of welding rods and availing value based exemption. The officer of Department had visited the factory premises of both the concerns and residence of the Director as well as other premises, where the officers found and seized various records & papers which culminated in passing of Impugned Order against the Appellants.

## **Held:**

The Hon’ble CESTAT, Delhi has relied upon the plethora of judgments and held that merely on the basis of papers/records seized allegedly containing the production & dispatch or statement of any employee/director of the Appellant accepting the facts would not suffice to conclude that the Appellant has removed the goods without payment of duty, in absence of any corroborative evidence. Hence, the demand and penalty against the Appellant and the Director is not sustainable.

- [Rule 21 of the Excise Rules does not lay down any procedure for giving information within 24 hours, therefore, substantive benefit cannot be denied in statute by prescribing time limit of 24 hours](#)

*Simbhaoli Sugar Mills Ltd. Vs. Commissioner of Central Excise, Meerut-II [2016-TIOL-162-CESTAT-ALL]*

## **Facts:**

Simbhaoli Sugar Mills Ltd. (“**the Appellant**”) filed applications seeking remission of duty on account of molasses said to have been lost during storage under Rule 21 of the Excise Rules. However, the Department rejected the application on the ground that the Appellant could not furnish the information regarding loss within 24 hours of occurrence.

Period Involved: 2003-04 to 2005-06

## **Held:**

The Hon’ble CESTAT, Allahabad relying upon the following cases:

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- ***Oswal Overseas Vs. Commissioner [2008 (225) ELT 271 (Tri-Del)]***;
- ***Seksaria Biswan Sugar Factory (P) Ltd. Vs. Commissioner of Central Excise, Lucknow [2005 (179) ELT 363 (Tri-Del)]***.

held that the intimation to Revenue is required only in the case of loss or destruction of goods by natural cause or accident. However, in the instant case, there was no such accident. Further, Rule 21 of the Excise Rules does not lay down any procedure for giving information within 24 hours. Therefore, the substantive benefit cannot be denied in the statute by prescribing time limit of 24 hours, which is not laid down in law.

➤ **[When the proceedings against the manufacturer stand concluded on payment of disputed amount of duty along with interest and penalty, no penalty would be imposable under Rule 26 of the Excise Rules on other persons like traders](#)**

***Commissioner of Central Excise and Customs Aurangabad / Nashik – II Vs. Ambika Waste Management Pvt. Ltd., Ambadas Santosh Ngargoje, Harish kumar Harji vandas Gandhi, Shree Salasar Ispat Pvt. Ltd. [2016 (1) TMI 438 - CESTAT MUMBAI]***

## **Facts:**

Ambika Waste Management Pvt. Ltd. (“**the Respondent**”) has settled the issue by paying the entire amount of duty liability, interest thereof and 25% of the duty as penalty imposed by the Department. However, the Department imposed penalty under Rule 26 of the Excise Rules on Ambadas Santosh Ngargoje, Harish kumar Harji vandas Gandhi, Shree Salasar Ispat Pvt. Ltd. (“**the other Respondents**”) on the ground that there was clandestine removal in the case of the Respondent and the other Respondents played an important role in abetting such clandestine removal.

## **Held:**

The Hon’ble CESTAT, Mumbai has relying upon the case of ***Commissioner of Central Excise, Raipur Vs. Abir Steel Rolling Mills [2013 (7) TMI 405 - CESTAT NEW DELHI]***, held that when the proceedings against the Respondent stand concluded on payment of disputed amount of duty along with interest and 25% of the duty as penalty, there would be no sense in continuing the proceedings for imposition of penalty under Rule 26 of the Excise Rules against the other Respondents like traders who had purchased the goods, transporters who had transported the goods cleared by the Respondent, the Directors/employees of the Respondent.

*Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.*

Thanks & Best Regards,

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