

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

Appeal No. E/3135/2004

Date 15/11/2007

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

To :  
C.C.E. MEERUT-I  
UNIVERSITY ROAD, MANGAL PANDEY NAGAR,  
MEERUT

C.C.E. MEERUT-I

Appellant  
Vs  
Respondent

M/S PURSHOTTAM INDUSTRIES LTD.

I am directed to transmit herewith a certified copy of Final order No. 566/2007-EX dated 04-10-07  
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 PURSHOTTAM INDUSTRIES LTD.

INDL. AREA, ROORKEE

2. Adv. / Consult

NONE

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL**

North Zonal Bench at New Delhi

**APPEAL No. E/3135/04**

(Arising out of Order-in-Appeal No. 152-CE/MRT-I/2004 dated 22.3.2004  
passed by Commissioner of Central Excise, Meerut I

For approval and signature:

**Hon'ble Ms. Jyoti Balasundaram (Vice President)**  
and  
**Hon'ble Mr. K.K. Agarwal, Member (Technical)**

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- |    |                                                                                                                                       |   |      |
|----|---------------------------------------------------------------------------------------------------------------------------------------|---|------|
| 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? | : |      |
| 3. | Whether Their Lordships wish to see the fair copy of the Order?                                                                       | : | Seen |
| 4. | Whether Order is to be circulated to the Departmental authorities?                                                                    | : | Yes  |
- 

**Commissioner of Central Excise, Meerut**

**Appellant**

Vs.

**M/s. Purushottam Industries Ltd.**

**Respondent**

**Appearance:**

Shri A.N. Sharma, Jt. CDR for appellant  
None for respondent

**CORAM:**

**Hon'ble Ms. Jyoti Balasundaram, Vice President**  
and  
**Hon'ble Mr. K.K. Agarwal, Member (Technical)**

Date of Decision: 4.10.2007

*Final* ORDER NO... *566/2007 EX*.....

Per: Ms. Jyoti Balasundaram, Vice President

The respondents are engaged in manufacture of M.S. Pipes falling under CET sub-heading 7306.90. On 22.8.95 the preventive officers of Central Excise Division visited their factory premises and in the course of preventive checks and physical verification of finished goods, a quantity of 14.435 MT of M.S. Pipes were found in excess of recorded balance in RG-1 Register and the same were seized. Certain records were resumed for scrutiny and it was found that the respondents were filing classification lists from time to time mentioning therein the description of goods as MSC/M.S. Pipes with market/buyer brand names and MSC/M.S. Pipes and tubes with own brand/unbranded. The pipes and tubes with market/buyer's brand names were cleared on payment of normal rate of 15% ad valorem and the pipes bearing their own brand/unbranded were cleared on payment of concessional rate of duty under notification no. 1/93-CE dated 28.2.1993 as amended. It appeared from the record that the assessee had originally bifurcated MS. Pipes manufactured and cleared by them into two categories so that they could keep the value of their own brand of pipes below the exemption limit of Rs. 3 crores, prescribed in the Notification so that they could have avail benefit of SSI benefit thereunder.

2. On 14.11.94, the Superintendent of Central Excise, wrote to appellants asking them why they are not mentioning brand name(s) of the other person(s) on the invoices, in response to which the assessee replied on 30.11.94 that it is a market practice of not mentioning size or brand name on the invoices and further that it would not have any revenue implication, if they did not mention the brand name in their invoices. Statement of Shri V.K. Agarwal, Director of the appellant was recorded under Section 14 of the Central Excise Act 1944 on 12.3.97 and 12.3.99. In his statement dated 12.3.97 on being questioned about the manufacture of unbranded and branded goods, he stated that they had manufactured MS Pipes of own brand in the name of 'PP' PURSHOTTAM and 'PIL', on which they had availed the benefit of SSI exemption. He further stated that they had also manufactured market brand pipes which were easily saleable in the market and those brands were not brand of anybody such as 'JTL' as shown. They did not avail benefit of SSI exemption on such pipes.

3. Thus, it appeared that the assessee had willfully shown some of their pipes as 'market/buyer brand pipes', without mentioning the name of specific brand in the records. The value of clearance of both categories of pipes manufactured and cleared by the assessee during the period 1993-94 exceeded the exemption limit of Rs. 3 crores in the financial year 1994-95, hence the assessee was not eligible to avail benefit of exemption in terms of SSI notification for the financial year 1995-96. It was found that Central Excise Duty to the extent of Rs. 6,25,000/- has been short paid during the financial year 1995-96. Show cause notice proposing recovery of duty on the above basis and proposing penal action was issued to the assessee: the demand was confirmed on adjudication by the Joint Commissioner of

Central Excise who also imposed penalty of amount equal to the duty under the provisions of Section 11AC of Central Excise Act, 1944 and penalty on the Director of the respondent Company under Rule 209A of the Central Excise Rules. The demand was confirmed by denying the benefit under the notification.

4. On appeal, the Commissioner (Appeals) accepted the contention of the assessee that the demand was barred by limitation, holding as under:-

“Appellant had filed declaration under Rule 173B w.e.f. 5.4.94 and 1.4.95 wherein they had clearly mentioned description of goods as (A) MSC/MS pipes and tubes with market buyers brand name, and duty 15% ad valorem as per financial bill 1994-95 (B) MSC/MS pipes and tubes with own brand/unbranded with exemption of notification no. 1/93 dated 28.2.93. The appellant had regularly submitted RT 12 returns regarding use of others trade name/brand name. Preventive Officers visited appellant's premises on 22.8.95 and verified the financial stock of branded goods and they did not raise objection at that time. Show cause notice was issued on 8.4.99, after a period of 3 and half years. The appellant had filed declaration and regularly filed RT12 return to Range Superintendent, and were maintaining proper records like RG1 Register, issuing proper invoices and were paying full rate of duty on the clearances of branded goods. The Range Superintendent, vide his letter dated 14.11.94 raised objections while assessing the RT12 returns, wherein very first objection was relating to Specification/Size/Brand name etc. while issuing the invoices. This was replied by the appellant vide their letter dated 30.11.94. Thus from above facts it is very clear that the fact was very well in the knowledge of the department that the appellant were manufacturing goods with others brand name/trade name. In these circumstances, invocation of extended period under Section 11A is not sustainable.

The main allegation of the department is that the appellant never manufactured market brand goods they had willfully shown some of their pipes as only "market brand pipes" on their invoices, RT12 returns and classification list/declaration, but the name of specific brand was never shown on these records. Accordingly, they had filed classification lists to this effect just to avail benefit of notification no. 1/93 dated 28.2.93 as amended and paid concessional rate of duty on pipes shown as "own brand pipes" with an intent to evade payment of appropriate Central Excise duty. Appellant submitted that they had been furnishing desired information to the department at the first instance and they never tried to conceal any facts. As and when any information was called for they had furnished information, what prevented them from making further queries or investigating the case. For any fault or lack of steps taken at proper time by the department, they cannot be held responsible. The Hon'ble CEGAT has also held in various cases that before approval of classification list, the Assistant Commissioner should do inquiry if required. In the instant case classification list was approved before raising any inquiry which shows that the department was fully satisfied with the declaration made by the appellant. In view of the above the demand of duty is not sustainable."

Hence this appeal by the revenue.

5. We have heard the learned JDR and perused the records as no one appeared for respondent in spite of notice. We find that the respondents had made a positive averment in the classification declaration that they were manufacturing MS pipes both of their own brand as well as bearing brand name of other persons which was deliberately false, for the reason that they were manufacturing only their own brand and the misdeclaration was resorted to for the purpose of fraudulent and wrongfully availing

benefit of exemption under SSI notification no. 1/93-CE. They also sought to mislead the department by reply dated 30.11.94 that it was the market practice not to mention the brand name. Since there has been a positive averment in the classification declaration which was a false one, the extended period of limitation is available to the department as the respondents have resorted to willful evasion of payment of duty. We, therefore, set aside the finding of the Commissioner (Appeals) that the demand is barred by limitation.

6. On merits, the respondents have no case in the light of the clear language of notification no. 1/93CE regarding ceiling limit of clearance value. Therefore, we set aside the impugned order and hold that duty is recoverable from the assessee. However, as regards penalty, which has been imposed under Section 11AC which was not on the statute book during the period in dispute, namely 1995-96, in the light of the recent Apex Court decision reported in 2007 (215) ELT 137 (SC) following its earlier decision in Elgi Equipment and holding that penalty under Section 11AC cannot be imposed when the period of dispute is prior to introduction of Section 11AC on statute book, we uphold the setting aside of penal action by the Commissioner (Appeals).

7. The appeal is thus partly allowed in the above terms.

(Pronounced in Court)

**(K.K. Agarwal)**  
Member (Technical)

**(Ms. Jyoti Balasundaram)**  
Vice President