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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/3738/2004 Date 27/06/2008

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

To :
M/S RAVI COTSYN LTD.
VILL. MANGARH (KOHARA) CHANDIGARH ROAD,
LUDHIANA

M/S RAVI COTSYN LTD. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.**381/2008 **Excise** dated 25-6-08 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. LUDHIANA
   F BLOCK, RISHI NAGAR, LUDHIANA
2. Adv. / Consult SH. K.K. ANAND, ADV.,
   A-5, BASEMENT,
   LAJPAT NAGAR-III, N. DELHI-24
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excisc & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal Nos. 3738 of 2004

[Arising out of Order-in-Appeal No. 232/CE/APPL/LDH/2004 dated 25.3.2004 passed by Commissioner of Central Excise (Appeals), Ludhiana.]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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?	:	NO
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

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M/s. Ravi Cotsyn Ltd. — Appellant

Vs.

Commissioner of Central Excise Ludhiana — Respondent

Appearance:

Mr. K.K. Sharma, Advocate for the Appellant
Mr. C.S. Rajput, DR for the Respondent

CORAM: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 16.6.2008
Date of Decision : 25.6.2008

FINAL ORDER NO. 381/08-EX

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner (Appeals) dated 25.3.04.

2. Heard both sides.

3. Brief facts of the case are as follows:

a) Appellant was engaged in the manufacture of Acrylic yarn falling under 5509.31 of Central Excise Tariff Act, 1985 and was availing facility of Cenvat under Rule 57 AB of Central Excise Rules, 1944.

b) On 21.11.2000 the Central Excise officers visited the factory and on physical verification of finished goods and raw materials ~~found~~ a shortage of 13.885 MT of Acrylic Yarn valued at Rs. 15,27,350/- involving Central Excise duty of Rs. 2,81,032/- was detected. Shortage of inputs 25.667 MT of acrylic iow valued at Rs.20,53,360/- involving Central Excise duty Rs.3,77,819/- was also detected.

c) Shri Ravi Jagota M.D. in his statement dated 20.11.2000 admitted that they had removed the above goods from their factory without issue of Central Excise invoices and without payment of Central Excise duty.

4. The original authority confirmed the demand of duty amounting to Rs.6,58,851/- which already stands paid. He ordered recovery of interest. In addition, he imposed penalty of Rs.6,58,851/- under Section 11 AC. The Commissioner (Appeals) by the impugned order concurred with the orders of the original authority.

that there were no actual shortage of raw materials as per the entries in the RG 23 A part I; that the demand as well as penalty are not sustainable.

5.2 He relies on the following decisions in support of his contention:-

1. Atlas Conductors vs. CCE, Mumbai [2008(221)ELT 231(Tri-Mum)];
2. CCE, Ahmedabad II vs. Bajrang Castings Ltd. [2007 (216) ELT 623 (Tri-Ahmd.)];
3. Coolwels Automobile Engineers [2007 (207)ELT 615 (Tri-Del)];
4. CCE, Ahmedabad vs. Pole Star Industries Ltd. [2007(216) ELT 257 (Tri-Ahmd)];
5. CCE, Ludhiana vs. Pee Jay International [2007 (213) ELT 709 (Tri-Del)].

6. Learned DR reiterates the findings of the Commissioner (Appeals).

7. We have carefully considered the submissions from both sides. In this case, at the time of visit by the officers there was substantial shortage of both raw materials and finished goods. The MD of the company admitted the shortage followed by voluntary payment of ~~the duty involved and paid~~ the entire duty involved. The officers visited the factory on 21.11.2000. Till the show cause notice was issued on 25.10.01, no retraction has been received from the Managing Director. On a careful reading of the order of the original authority and Commissioner (Appeals), it is noticed that the appellant contested only the imposition of the penalty. At this distant date unauthenticated extracts of RG 23 is produced and it is claimed that there was no shortage of material during the visit by the officers. This claim is not acceptable. We hold that this is an admitted case of clandestine

8. Alternatively, the learned advocate submitted that the duty amount has been paid before issue of show cause notice, and sought reduction of penalty. In this regard, he placed reliance on the decision of the Hon'ble High Court of Delhi in the case of KP Pouches Pvt. Ltd. vs. Union of India & another reported in 2008 (TIOL) 240-HC-Del-CX, wherein, under substantially same circumstances, the penalty was reduced to 25% of the duty involved . Learned DR submits that though the duty has been paid prior to issuing show cause notice, the interest and penalty has not been paid within 30 days and hence conditions for reduction of penalty in terms of proviso to Section 11 AC have not been fulfilled.

9. Taking the entire facts and circumstances of the case, we uphold the order of the Commissioner (Appeals) in so far as the same relates to confirmation of demand and order for recovery of interest. However, the penalty is reduced from Rs. 6,58,851 to Rs.2,00,000/- (Rupees Two lakhs only).

10. The appeal is disposed of on the above terms.

(Pronounced on 25/6/2008 in the open Court)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)

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