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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/4252/2004 Date 12/08/2008

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

To .
C.C.E. MEERUT

UNIVERSITY ROAD, MANGAL PANDEY NAGAR,
MEERUT
C.C.E. MEERUT Appellant

Vs

SHRI V.K. AGARWAL, DIRECTOR PURSHITTAM INDS. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 590/08-EX **Excise** dated 29-7-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar

(Excise Appeal Branch)

Copy to :
1. Respondent

SHRI V.K. AGARWAL, DIRECTOR PURSHITTAM INDS. LTD.

BEHIND INDL. AREA, RAM NAGAR, ROORKEE
2. Adv. / Consult
MR RAJESH CHHIBBER

FA/9, NEW KAVI NAGAR, GHAZIABAD

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. Excise & 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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, COURT No.III

Excise Appeal No.4252/2004-Ex(Br)

(Arising out of order in appeal No.355/CE/MRT-I/2004 dated 17.5.2004 passed by the Commissioner (Appeals) Customs & Central Excise, Meerut-I)

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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?	Yes
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-I Appellant
(Rep. by Shri M.M. Singh, DR)

Vs

Shri V.K. Agarwal Respondent
(Rep. by none)

Coram: Hon'ble Mr. M. Veeraiyan,Member(Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

Date of Hearing: 29.7.2008

FINAL ORDER No. 590 / 08-EX.

Per M. Veeraiyan:

This is an appeal filed by the Department against the order of Commissioner(Appeals) No.355/CE/MRT-I/2004 dated 17.5.2004 by which penalty on Shri V.K. Agarwal,the Director of M/s Pushottam Pipes & Industries Ltd was set aside.

2. There was a request for adjournment on behalf of the respondent and the same is rejected. Heard the learned DR.

3. The relevant facts, in brief, are as follows:-

a) A demand of duty of Rs.6,25,000/- was confirmed against M/s Purushottam Pipes & Industries Ltd and a penalty of Rs.6,25,000/- was imposed on them under Section 11AC. In addition a sum of Rs.50,000/- was imposed as penalty under Rule 209-A of the Central Excise Rules on Shri V.K. Agarwal, Director of the above company.

b) Against the order demanding duty and imposing penalty, M/s Purushottam Pipes & Industries Ltd filed appeal before the Commissioner (Appeals) which was decided in favour of the assessee. The Department filed appeal against the said order of the Commissioner (Appeals) and Tribunal vide their Final Order No. 566/2007-Ex dated 4.10.2007 disposed of the appeal restoring the order confirming the demand of duty but at the same tome setting aside the penalty on the company under Section 11AC .

c) On appeal filed by the Director of the company, the Commissioner (appeals) set aside the penalty by the impugned order.

4. The learned DR submits that as of now the duty demand stands confirmed; no penalty has been imposed on the company under Section 11AC on the ground that Section 11AC was not in operation during the relevant period. He submits that at least the penalty imposed on the Director should have been upheld.

5. We have carefully considered the submissions and perused the records. The dispute relates to clearance of goods with the brand of others by the above mentioned company for which the appellant was one of the directors. There may be justification for imposition of penalty on the company which was not upheld on the ground Section 11AC was wrongly invoked. The

issue relating to imposition of penalty on the company stands decided by the order dated 4-10-2007 of the Tribunal. There is no reliable evidence against Shri V.K. Agarwal warranting a penalty on him under Rule 209-A. Further, we find that the Commissioner (Appeals) and the Tribunal did not uphold the penalty on the company.

6. In view of the above, we do not find justification for imposing penalty on the Director. We do not find reason to interfere with the decision of the Commissioner (Appeals) in so far as setting aside penalty on the Director Shri V.K. Agarwal.

7. Appeal by the Department is rejected.

[Operative part of the order pronounced in the open Court on 29.7.2008]

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

MPS*