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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/5031/2004 Date 08/08/2008

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

To :
M/S EICHER MOTORS LTD.

102,INDL. AREA NO 1,PITHAMPUR, DISTT.DHAR

M/S EICHER MOTORS LTD. Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 576/08-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

C.C.E. INDORE

MANIK BAGH PALACE P.O.- 10, INDORE

2. Adv. / Consult

MR.V.LAKSHMI KUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.5031 of 2004-Excise Branch

[Arising out of Order-in-Appeal No.291-CE/IND/APPLS-II/04 dated 9.07.2004 passed by the Commissioner of Central Excise (Appeals)-II, Indore]

Date of Hearing/ Decision:29.07.2008

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 CESTAT (Procedure) Rules, 1982.
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? :
4. Whether Order is to be circulated to the Departmental authorities? :

M/s. Eicher Motors Ltd. ...Appellant
[Rep. by Shri A.R.M. Rao, Advocate & Shri R.K. Haseja, Advocate]

Vs.

CCE, Indore ...Respondent
[Rep. by Shri C.S. Rajput, DR]

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

FINAL Order No. 576/08-EX /Dated:29.07.2008

Per P.K. DAS:

The relevant facts of the case as on record, in brief, are that the appellant is engaged in the manufacture of Motor Vehicles classifiable under Chapter 87 of the Schedule to the Central Excise Tariff Act, 1985. The appellant removed inputs/partially processed goods to job workers under the challan issued under Rule 57F of erstwhile Central Excise Rules, 1944. It is noticed that the job worker returned back processing material. But, the scrap generated out processing of material was not returned back. The appellant is liable to pay duty on waste and scrap. The appellant paid duty upon detection by the Central Excise Officers before issue of show cause notice. Adjudicating Authority confirmed the demand of duty and appropriated the said amount as deposited by them and imposed penalty of equal amount under Section 11 AC of Central Excise Act, 1944, which has been upheld by the Commissioner (Appeals).

2. Ld. Advocate on behalf of the appellant submits that there was a confusion regarding the payment of duty on the waste and scrap generated at the job worker's premises under Rule 57F of the erstwhile Central Excise Rules, 1944. He relied upon the decision of the Tribunal in the case of Preetam Enterprises Vs. Commissioner of Central Excise, Pune-II reported in 2004 (173) ELT 26 (Tribunal-Mumbai). He submits that in view of the decision of the Tribunal, the demand of duty on the appellant-manufacturer is not sustainable. He fairly submits that the appellant already deposited duty before issue of show cause notice and, therefore, demand is not contested by them. But, the penalty under Section 11 AC of the Act is totally unjustified.

3. Ld. DR reiterates the finding of Commissioner (Appeals). He submits that in this case, the job worker is an un-registered person and, therefore, manufacturer was liable to pay the duty.

4. After hearing both the sides and on perusal of records, we find that the goods were cleared under challan under Rule 57F of the erstwhile Central Excise Rules. In view of the decision of the Tribunal, it appears that there was a confusion regarding the payment of duty on this issue. In any event, the ld. Advocate is not disputing demand of duty. We find that the appellant deposited duty before issue of show cause notice. There is

no material placed by the Revenue regarding suppression of facts with intent to evade payment of duty.

5. In view of the above discussion, we find that the penalty imposed under Section 11 AC of the Act is not sustainable. Accordingly, the penalty is set aside. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 29.7.2008.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.