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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/4577/2004,5029/2004 - EX[DB] Date 11/12/2008

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

To :
C.C.E. CHANDIGARH
PLOT NO 19, SEC 17-C, CHANDIGARH
C.C.E. CHANDIGARH Appellant
Vs
M/S HIM TECHNO FORGE LTD. (GEAR DIVISION) Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 921-922/08- **EX[DB]** dated 2-12-08

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 HIM TECHNO FORGE LTD. (GEAR DIVISION)
   VILL.- BILLANWALI, BADDI, DISTT. SOLAN, (H.P.)
2. Adv. / Consult SH. HEMANT BAJAJ, ADV.,
   A-5, BASEMENT,
   LAJPAT NAGAR-III, N.DELHI-24
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 - 3
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
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-1
15. Office Copy
16. Guard file

Assistant Registrar
(Excise Appeal Branch)

~~M/S HIM TECHNO FORGE LTD. (GEAR DIVISION)~~
~~VILL. BILLANWALI, BADDI~~

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/4577 & 5029/04

[Arising out of Order-in-Appeal No.408/CE/CHD/2004 dt.10.6.04 passed by the Commissioner(Appeals), Chandigarh)

CCE, Chandigarh Appellant

Versus

M/s. Him Techno Forge Ltd. Respondent
Vice-versa

Appearance

Shri M.M.Singh, Authorised Departmental Representative(DR) For appellant
Shri Hemant Bajaj, Adv. For respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 24.11.08
FINAL Order No. 921-922/08-EX.

Per D.N.Panda:

Both the assessee and Revenue have come in appeal. The assessee is in Appeal case No.5029/04 being aggrieved by the decision of the appellate authority holding the classification issue against the appellant. But the assessee got full relief on penalty.

2. In Appeal case No.4577/04, Revenue is in appeal being aggrieved by the aforesaid appellate order due to waiver of penalty imposed on the assessee.

3. Ld. Counsel Shri Hemant Bajaj appearing on behalf of the appellant fairly submitted that the matter in controversy is classification. But such issue relating to the impugned goods have already been decided by the Tribunal in the case of CCE, Chandigarh vs Raja Forgings & Gears Ltd.

E/4577 & 5029/04

reported in 2008(89)RLT.6 holding that those goods are classifiable under the heading 8483.90. But he prays that Revenue's prayer in Appeal case No.4577/04 should not be allowed who have come against setting aside of ~~waiver of~~ penalty and limiting the duty demand to normal limitation period by ~~granted by~~ the ld. first appellate authority on proper consideration of the matter.

4. Ld. DR appearing on behalf of the revenue submits that there was no justifiable reason for the learned appellate authority below to grant relief of penalty. He argued that extended period of adjudication under proviso to Section 11A was invokable. Therefore penalty levied by the order of adjudication should be upheld reversing the first appellate decision.

4.1. Heard both sides and perused the records.

4.2 We are surprised that when the moot question of classification was before the learned appellate authority below, why he failed to decide that issue by a reasoned and a speaking order. He proceed to pass an elloberate order to say that penalty was not leviable for the reason that the appellant had filed the classification list and that was within the knowledge of the revenue. He also observed that extended period was not invokable. We are also surprised that when first appellate authority has to bring out clearly the matter in controversy by a speaking order, reason of decision and decision on the controversial issues which is a legal requirement, he failed to follow the same. Considering that there is a legal infirmity of above nature and when the impugned order not being speaking and reasoned on the issue of classification was passed, we are of the opinion that the learned appellate authority should do well to make an exercise in the light of the decision in Raja Forgings & Gears Ltd. aforesaid. While doing such exercise, the authority may come across all material facts as to invokability of the extended period so also as to leviability of penalty if any.

5. In view of the aforesaid observation and findings, we remand the matter back to the learned appellate authority to decide the appeal in the light of Raja Forging's case aforesaid and determine the classification, in accordance with law as well as invokability of the extended period and leviability of penalty, if any, by a speaking and reasoned order. The appellant deserves fair opportunity of hearing before that authority while deciding the matter afresh in the light of law and material facts borne by record.

6. In the result, in view of the remand aforesaid, we set aside the impugned order and both the appeals are disposed of in the aforesaid manner. In the interest of justice, it is preferred that the learned appellate authority below may disposes the matter by end of March'2009.

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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