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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/5222/2004 &6135/2004 - EX[DB] Date 02/12/2008

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

To :
H.L. VYAS, DIRECTOR OF M/S RAJESH STRIPS LTD.
535-C, URLA INDL. COMPLEX, RAIPUR, (C.G.)

H.L. VYAS, DIRECTOR OF M/S RAJESH STRIPS LTD. Appellant
Vs
C.C.E. RAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 892-893/2008- **EX[DB]** dated 27-11-08 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. RAIPUR
   DHAMTARI ROAD, TIKRAPARA, RAIPUR
2. Adv. / Consult SH. L.P. ASTHANA, ADV.,
   R-163, PART-I,
   G.K. N. DELHI
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)

17. RAJESH STRIPS LIMITED
    535-C, URLA INDUSTRIAL COMPLEX RAIPUR
    CHHARTTISGARH

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

E/5222 & 6135/04

[Arising out of Order-in-Appeal No.175-178/RPR-1/2004 dt.22.7.04 passed by the Commissioner(Appeals), Raipur)

Sh. H.L.Vyas
M/s. Rajesh Strips Ltd. Appellant

Versus

CCE, Raipur Respondent

Appearance

Shri L.P.Asthana, Adv. for the appellant
Shri M.M.Singh, Authorised Departmental Representative(DR) For respondent

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

Date of decision: 20.11.08
FINAL Order No. 892-893 / 08-EX

Per D.N.Panda:

Ld. Counsel Shri L.P.Asthana was very fair at the outset to submit that consequent upon partial relief granted by Ld. appellate authority by order dt.22.7.04, the appellant is unable to dispute further in respect of redemption fine reduced to Rs.3 lakhs by ld. appellate authority. He also submits that the order passed by the ld. appellate authority gives rise to duty demand of Rs.12,52,884/- on the charge of shortage of finished goods and duty demand of Rs.2,93,112/- against the charge of shortage of

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E/5222 & 6135/04

raw-materials. Both the duty demand taken together is arrived at Rs.15,45,996/-. According to him, the appellate order passed by the authorities below does not provide any scope for argument further today. Therefore, the decision as that may flow in respect of duty and redemption fine upon hearing revenue shall govern the Appellant.

2. So far as the levy of penalty of equal amount of duty is concerned, he argues that the levy being under Section 11AC of Central Excise Act,44 that may be looked according to statutory provision to test the elements of penal liability since essential ingredients of penal law under Section 11AC are not present in the present appeal.

3. Ld. DR appearing on behalf of the revenue contested only on quantum of penalty levied for the reason stated in para (vii) of para 9 of Appellate order. He brought to our notice the reasons contributing to evasion which has occurred. Such reason is categorical admission of the Director of the appellant Shri H.L.Vyas. According to thatDirector, the reason was raw-material i.e. MS End Cutting of Rolled Products, Sponge Iron and Pig Iron were in fact was not received by the appellant but the document showing receipt thereof was used by the appellant to avail Modvat credit appearing at para (vii) at page 15 of paper book. Also he stated that the reason about shortage was due to reason of removals of finished goods in clandestine manner without payment of duty and without issue of invoice. Therefore, a proper reading of the result of statement as appearing in

E/5222 & 6135/04

appellate order clearly leads to the conclusion that the ingredient "fraud" was an important factor resulting in evasion of duty attracting Section 11AC of the Central Excise Act,44. Therefore, the appellant should not get any immunity in the present appeal.

4. Heard both sides and perused the records.

There is no dispute by the appellant on both the contents of para 9(vii) appearing at page 15 of the paper book as stated by Revenue. Modus-operandi adopted by the appellant was questionable. We are unable to agree with the Ld. Counsel for the appellant that the element "fraud" was absent. This we say from a thorough reading from para 9(vii)as stated above and by an objective examination of governing facts and attendant circumstances, We are of the view that essential ingredient of Section 11AC being present, the appellant does not deserve any immunity from penalty. For such reason, no intervention to the impugned order is called for. Therefore, the appeal of the appellant M/s. Rajesh Strips in Appeal case No.E/6135/04 fails and duty and penalty levied by the impugned order sustain.

5. Ld. Counsel submits that the penalty in Appeal cse No.5222/04 in respect of Director may be considered in view of heavy penalty imposed on him. He submits that penalty of Rs.3 lakhs was imposed on the appellant's Director in Appeal case No.E/6135/04 unreasonably. Ld. DR's submission is that there shall be no immunity from penalty to this

appellant. For our observation aforesaid, the present appellant who is a Director appears to be instrument for evasion as per para 9(vii)at page 15 of paper book, we hold that this appellant should also fail in this appeal. Accordingly, his appeal is also dismissed.

6. In the result, both the appeals are dismissed.

(Order dictated and pronounced in the open Court).

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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