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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/4683/2004-4684/2004 - EX[DB]

Date 03/11/2008

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

To :
M/S TOSHIKA INTERNATIONAL LTD.
290, INDL. AREA, PHASE-II, CHANDIGARH

M/S TOSHIKA INTERNATIONAL LTD. Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 836-837/08- **EX[DB]** dated 04-9-08 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. CHANDIGARH
   PLOT NO 19, SEC 17-C, CHANDIGARH
2. Adv. / Consult
   MR.GAGAN KOHLI
   394,SECTOR-30 A, CHANDIGARH.

2. SH. P.C. JAIN, C/o APPELLANT
3. SH. VIVEK KOHLI, ADV., R-89, 2ND FLOOR, GREATER KAILASH, PART-1, N. DELHI-48

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. SHRI DEVENDERJIT SINGH DHILLON MANAGING DIRECTOR O
290, INDL. AREA, PHASE-II, CHANDIGARH

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

Excise Appeal No. 4683-4684 of 2004

(Arising out of common Order-in-Original No. 33/CE/2004 dated 28.3.2004/14.6.2004 passed by the Commissioner, Central Excise, Chandigarh)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR. MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would 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 Toshika International Ltd. — Appellant
Shri Devenderjit Singh Dhillon, M.D.

Vs.

CCE, Chandigarh — Respondent

Appearance:
Sh. P.C. Jain, Ashwani Sharma, Sudesh Vijayan, Advocates - For appellant
Shri M.M. Singh, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 4.9.2008

Final Order No. 836-837/08-EX dated............

Per S.S. Kang:

The appellant filed this appeal against the impugned order whereby demand of Rs.1,61,96,088/- was confirmed and penalties were imposed under Section 11AC of the Central Excise Act.

2. The brief facts of the case are that the appellants are engaged in the manufacture of medicaments and were availing the benefit of small scale exemption notification during the relevant period. A show-cause notice was issued to the appellant for demand of duty and for imposition of penalties on the ground that the appellant suppressed the production of the goods and wrongly availed benefit of notification. As their clearances in the year 1997-98 were of Rs.34,61,868.47 for 1998-99 Rs.4,83,48,022.00 and for the year 1999-2000 Rs. 4,56,82,793.60 as reflected in the balance sheet which was submitted to the Health Department to obtain the tender.

3. The adjudicating authority confirmed the demand and imposed penalties.

4. The contention of the appellant is that in response to the tender by the Director of Health and Family Welfare, Punjab, the appellant submitted their offers for supply of the

medicaments. The terms and conditions of the tender was that annual turn over of the manufacturing firm must be over Rs. Four crores in the preceding financial year and the same must be supported by duly attested certificate by Chartered Accountant. The contention is that these figures were mentioned in the balance sheet just to submit to the Health Department for getting the tender. The contention is that there is no evidence on record to show that the appellant manufactured excisable goods and cleared the same in respect of which demand is confirmed. No investigation was conducted from the workers of the appellant-firm or from their customers regarding clandestine manufacture of clearance of the goods. The contention is that the figures mentioned in the balance sheet just to obtain the order from the Health Department cannot be made basis for raising demand on the ground that the manufactured goods were cleared without payment of duty. The appellant relied upon the following decisions :-

1) **Punjab Oil & Silicate Mills Vs. CCE** reported in 1993 (65) ELT 268.

2) **Rishab Refractories Pvt. Ltd. Vs. CCE** reported in 1996 (87) ELT 93.

3) **Elmech Engineers Vs. CCE** reported in 2001 (129) ELT 634.

4) **CCE Vs. Universal Polythelene Industries** reported in 2001 (130) ELT 228.

5) **CCE Vs. Abhisek Enterprise** reported in 2007 (217) ELT 142.

The contention of the appellant is that in the above decisions, the Tribunal had taken a consistent view that demand cannot be raised on the basis of inflated figures which were submitted other departments for getting some benefits. The appellant relied upon the decision of Hon'ble Madras High Court in the case of **State of Tamil Nadu Vs. Indian Crafts & Industries** reported in 1970 (25) STC 466 whereby Hon'ble High Court held that merely because the assessee conducted himself in a manner which was not conducive to ethics, the taxing authority could not invoke the provisions of reassessment and penalising. The morality and intention of an assessee does not enter into the field of adjudication in taxing law.

5. The contention of the Revenue is that the appellants submitted balance sheet in response to the tenders issued by the Health Department and those figures are based on the record maintained by the appellant hence the duty was rightly confirmed.

7. We find that in this case, the only basis for demand of duty is the figures mentioned in the balance sheet submitted the Health Department in response to the tenders for supply of medicines. The condition of the tender was that the turn over of the manufacturing firm should be more than Rs. Four crores in previous year. There is no other evidence on record to show that the appellant manufactured such goods and cleared without payment of duty. The Tribunal in the case of **Punjab Oil & Silicate** (supra) after relying upon the decision of Hon'ble Madras High Court in the case of **Indian Crafts & Industries** (supra) held that the demand on the basis of affidavits indicating value of clearances of the excisable goods filed before Department of Industries for the purpose of allotment of coal is not sustainable in absence of any corroborative evidence. The same view has been taken

by the Tribunal in other decision relied upon by the appellant. As in the present case no investigation was conducted by the Revenue in respect of procurement of raw material, manufacture and clearance of the goods regarding which demand is confirmed and ~~T~~the demand is only based on the figures submitted to the Health Department for procurement of order in response to tenders, therefore, in view of the decisions relied upon by the appellant the demand and imposition of penalties are not sustainable hence set aside. The appeals are allowed. Appellants are entitled for consequential relief, if any, in accordance with law.

(Pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM