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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/5493/2004-5494/2004 - EX[DB] Date 19/02/2009

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

To :
C.C.E. INDORE (M.P)
4,INDRALOK COLONY,KESAR BAGH ROAD, INDORE

C.C.E. INDORE (M.P) Appellant
Vs
PHIROZE SETHNA PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 138-139/2009- **EX[DB]** dated 12-2-09

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
PHIROZE SETHNA PVT.LTD.
IST FLOOR, ROYAL INSURANCE BUILDING, 14,JAMSHEDJI TATA ROAD, MUMBAI-400020
2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)
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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

17. SHRI D.R.PAL FECTORY MANAGER, S-5/1
ROAD NO.3,SEC-1,PITHAMPUR M.P

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I

Excise Appeal Nos. 5493 – 5494 of 2004

[Arising out of Order-in-Appeal No. IND-I/323 & 324/04 dated 30.7.2004 passed by the Commissioner (Appeals-I) Customs & Central Excise, Indore]

Date of Hearing/Decision : 12.02.2009

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

CCE, Indore

Appellant
[Rep. by Mr. B.S. Suhag, DR]

Versus

M/s Phiroze Sethna Pvt. Limited
Shri D.R. Pal, Factory Manager

Respondent

[Rep. by Mr. Ramesh Nair, Advocate]

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

FINAL **Order** 138 – 139 / 09 – EX

Per M. Veeraiyan

These two appeals by the Department are against the orders of the Commissioner (Appeals) No. IND-I/323 & 324/04 dated 30.7.2004 by which Commissioner (Appeals) set aside the order of the original authority demanding duty of Rs. 11,12,116/- from the respondent company and imposing penalties on the respondent company and Mr. D.R. Pal, Factory Manager of the respondent company.

2. Heard both sides.

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

(a) The respondent have manufacturing units at three places namely; Thane (Maharashtra), Burhanpur (Madhya Pradesh) and Pithampur (Madhya Pradesh) and the later two units fall in the jurisdiction of same Commissionerate but under different division. To the Excise authorities in charge of Thane unit they disclosed on 11-05-94 the existence of unit at Thane and Burhanpur but at that time they did not declare the unit at Pithampur.

(b) In respect of Burhanpur unit, the existence of other two units was suo -motto declared by them through their letter dated 23.01.1996 addressed to the Superintendent, in charge of Burhanpur unit with a copy to the Assistant Commissioner, Division-I Indore.

(c) Vide their letter dated 02.02.1996 addressed to Superintendent, Pithampur they informed suo-motto the existence of other two units and also paid differential duty of Rs. 1,27,418/- for the year 1994-95 and Rs. 1,46,338/- relating to the period 01.04.1995 to 21.01.1996.

(d) Show cause notice dated 15.04.1999 was issued alleging that the existence of three units and value of clearances relating to each of those units have not been correctly declared and that the Thane unit was not availing the benefit of exemption under Notification No. 1/1993 and, therefore, the Pithampur unit was not eligible for exemption.

(e) The original authority confirmed the demand of Rs. 5,06,065.65 for the year 1994-95 and Rs.606050.46 for the year 1995-96 and imposed penalty of Rs. 25,000/- on the company and Rs. 10,000/- on the Factory Manager.

(f) Commissioner (Appeals) allowed the appeals on the ground that the demand is time barred.

4. Learned DR submits that the exemption is available to a manufacturer and all the three units belong to the same manufacturer; the respondent had obligation to declare the existence of all the three units and their clearances so that the Department can determine the eligibility otherwise of the exemption. In this case, the respondent has not declared existence of three units to the concerned Central Excise authorities and suppressed the existence of one or more units. All the relevant facts were declared for the first time only in February 1996 in so far the Pithampur unit is concerned. Therefore, for demand of duty for the period prior to 02.02.1996, the extended period of limitation can be invoked. The order of Commissioner (Appeals) requires to be set aside.

5.1. Learned Advocate for the respondent submits that they were under mistaken impression that each of the units can separately avail exemption. When they got advice that the clearances of the three units are required to be clubbed together for availing exemption, they on their own intimated the details and paid the duty which was payable according to them. After they intimated these details on February 1996, the Department has chosen to keep quite and issued show cause notice without any further investigation only on 15.4.1999 and therefore, the entire demand is time barred, as rightly held by the Commissioner (Appeals)

5.2. In respect of Burhanpur unit also, on similar situation, they paid the duty and the Additional Commissioner accepted the view of the respondent that the duty paid by them was correct. However, the Department took up the decision for review and appeal was filed before Commissioner (Appeals) on the ground that Thane unit was not availing the exemption and hence proposing enhancement of the duty demand which was not accepted by the Commissioner (Appeals).

6.1. We have carefully considered the submissions from both sides. We find that the alleged mistake of not disclosing the existence of three units of the respondent was not detected by the Department. The entire facts have been brought to the notice of the Department only by the respondent first vide their letter dated 23.01.1996 addressed to the Burhanpur unit wherein they have made the following submissions:-

> - "We have further to inform your kind honour that when the Excise Duty started being levied on our Thane and Burhanpur unit w.e.f. 1.4.94 we were misguided that we need not to declare other units and we can avail full exemption in the individual factory. Thus the mistake was committed by us.
>
> Through at our Thane factory we have availed full exemption upto aggregate clearance value of Rs. 21,37,689 but afterwards we started paying duty as per normal rate without availing exemptions of Notifications No. 1/93 dt. 28.2.93.
>
> We have availed exemption of Notification No. 1/93 separately in all the three factories without clubbing each other's clearance value. Now we have worked out the effect of differential Excise duty after clubbing the value of all the three factories in the year 1994-95 which comes to Rs.... at our Burhanpur factory.
>
> This differential excise duty has been debited in our PLA vide Entry No. 601 dt. 23.11.96.
>
> During 1995-96 our Thane Factory has not availed the exemption- of Notification No. 1/93 dt. 28.2.93 but Burhanpur factory has paid concessional duty as per Notification No. 1/93 without availing full exemption of Rs. 30 lacs. During the same period our Pithampur factory has availed full exemption of Rs. 30 lacs and subsequently slab exemption as per Notification No. 1/93".

6.2. The review proceedings initiated in respect of the said unit against the order of the Additional Commissioner accepting the duty payment by the unit has been rejected by the Commissioner (Appeals). The issue before the Commissioner (Appeals) was the fact of non-disclosure of the fact of not availing of benefit of exemption under Notification No 1/93 by their Thane unit.

7. The same details have been furnished in respect of the present unit vide their letter dated 02.02.1996. We find that no investigation by the Central Excise

authorities have been made or even if made no evidence to substantiate the allegation of deliberate suppression of relevant facts has been relied up on. Further, in the grounds of appeal it has been stated that "although they had declared the existence of Thane and Burhanpur units in their declaration No. 1/95-96 w.e.f. 01.05.95 under Rule 173B, the fact that their Thane unit had opted out of the SSI scheme was not brought to the knowledge of their jurisdictional Central Excise authorities".

8. We are not able to agree to the contention that it was a deliberate attempt on the part of the respondent in not revealing the fact that Thane unit was not availing exemption meant for small scale unit, though the said fact may be relevant to determine the eligibility of exemption for the present unit. Further, even though the existence of more than one unit was declared on 01.05.1995, there was no action by way of investigation by the Department. Under these circumstances, the allegation of suppression with intent to evade payment of duty cannot be sustained. There is no justification to invoke extended period. Therefore, we do not find any reason to interfere with the order of the Commissioner (Appeals).

9. Appeals by the Department are rejected.

[Dictated and pronounced in the open Court]

[M. Veeraiyan]
Member (Technical)

[P.K. Das]
Member (Judicial)

[Pant]