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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/6194/2004 - EX[DB] Date 06/03/2009

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

To :
M/S AABHAS SPINNERS PVT.LTD.
C-90,PHASE-V,FOCAL POINT LUDHIANA

M/S AABHAS SPINNERS PVT.LTD. Appellant
Vs
C.C.E.LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 202/2009-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
   C.C.E.LUDHIANA
   F-BLOCK RISHI NAGAR LUDHIANA
2. Adv. / Consult SH. HEMANT BAJAJ, ADV., C/O
   MR.G.S.BHANGOO
   631 (FF), SECTOR 11B, CHANDIGARH

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
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 6194 OF 2004

[Arising out of Order-in-Appeal No. 512-513/CE/APPL/LDH/04 dated 22.09.2004 passed by the Commissioner (Appeals), Central Excise, Ludhiana]

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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. Aabhas Spinners Pvt. Ltd. Appellant

Vs.

CCE, Ludhiana Respondent

Appearance:

Shri Hemant Bajaj, Advocate for the appellant;
Shri A.K. Rastogi, Departmental Representative, for the Revenue,

Coram:

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

Date of hearing/decision: 12th February, 2009

FINAL ORDER NO. 262 / 09-EB **dated**

Per P.K. DAS:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of yarn falling under Chapter 55 of Central Excise Tariff Act, 1985. Central Exicse officers visited the factory premises on 15.03.2003 and on physical verification of stock, they detected shortage of 51.847 M.T. of raw material. The appellant immediately admitted the shortage and debited the duty amount of Rs. 6,48,710/- availed by them as Cenvat credit on the said raw material. The original authority confirmed the demand of duty of Rs. 6,48,710/- and appropriated the amount already deposited and imposed penalty of equal amount under Section 11AC of Central Excise Act, 1944 and also imposed penalty of Rs. 1 lakh on the Director of the appellant company. The Commissioner (Appeals) modified the adjudication order to the extent penalty was reduced to 25% of the duty amount as the appellant deposited penalty of 25% of duty within 30 days from the date of receipt of Adjudication order and set aside the penalty imposed on the Director of the appellant company. Hence, this appeal is filed by the appellant.

2. Learned Advocate submits that the Director of the appellant company was out of station due to By-pass surgery. The authorized signatory at the time of visit of the Central Excise officers admitted the

shortage and debited the duty. There is no evidence of clandestine removal of the goods and, therefore, penalty under Section 11AC of the Central Excise Act, 1944 is not sustainable. He relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana vs. Omkar Steel Tubes (P) Ltd., reported in 2008 (221) ELT 200 (P&H).

3. Learned D.R. reiterates the finding of the Commissioner (Appeals). He submits that the appellants deposited penalty 25% of duty after receipt of the adjudication order. He, further, submits that since the appellants had already deposited the 25% of duty as penalty the Commissioner (Appeals) reduced the penalty in pursuance of the proviso to Section 11AC of the Act. He, further, submits that the appellants admitted the shortage in his statement on the spot.

4. After hearing both sides and on perusal of the records we find that the General Manager and the authorized signatory of the appellant company in his statement could not explain the shortage as the Director of the appellant company was out of station as he was admitted in a hospital for By-pass surgery. Further, Shri Padam Dalmia, Director of the firm also in his statement could not explain the shortage as he was out of station during the material time due to By-pass surgery. We do not find any material for clandestine removal of the goods. Learned D.R. submits that the Director of the appellant company in his statement stated that the goods might have been cleared from their factory and, therefore,

it is apparent that the raw materials are cleared clandestinely. We find that the Director of the appellant company was out of station at the material time due to By-pass surgery and there is no dispute on this fact. So the statement of the Director of the appellant company would amount to presumption which cannot be the basis to suggest the clandestine removal. Hon'ble Punjab & Haryana High Court in the case of Omkar Steel Tubes (P) Ltd. (supra) held that for imposition of penalty under Section 11AC of the Act mens rea are to be satisfied. We have also noted that the demand of duty and payment thereof have not been disputed by the appellant. We do not find any material that the goods were clandestinely removed and, therefore, we hold that penalty under Section 11AC of the Act is not warranted. Accordingly, penalty is set aside. Appeal is allowed.

(Dictated & pronounced in the Open Court.)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

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