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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/3974/2004-3975/2004,3978/2004 & 3820/04 - EX[DB] Date 09/03/2009

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

To :
M/S ARTI ELECTRODES PVT. LTD.
L-1/41, DEHRADUN ROAD, SAHARANPUR (U.P.)

M/S ARTI ELECTRODES PVT. LTD. Appellant
Vs
C.C.E. MEERUT-I Respondent

I am directed to transmit herewith a certified copy of **Final order No.214-217/2009-EX[DB]** dated 25-2-09 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. MEERUT-I
UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT
2. Adv. / Consult
MR.AALOK ARORA,ADV
82-MISSION COMPOUND,SAHARANPUR (U.P.)

3 C.D.R
~~4 I.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
17. M/S. SHRI. S.S. GULATI, C/o SHRI. DEEPAK GULATI,
L-1/41, DEHRADUN ROAD, SAHARANPUR - UP
18. M/S. JAIPUR CEMENT PIPE & AGENCIES,
L-1/41, DEHRADUN ROAD, SAHARANPUR - UP

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal Nos. 3974, 3975, 3978 & 3820 of 2004

[Arising out of Order-in-Appeal No. 224-225/CE/MRT-I/2004 dated 12.4.2004 and 149/CE/MRT-I/2004 dated 15.3.2004 both passed by Commissioner of Central Excise(Appeals), Meerut I.]

For approval and signature:

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

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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

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M/s. Arti Electrodes Pvt. Ltd. Appellants
Late Shri S.S. Gulati, MD
M/s. Jaipur Cement Pipe & Agencies
M/s. Arti Electrodes Pvt. Ltd.

Vs.

Commissioner of Central Excise Respondent
Meerut I

Appearance:

Shri Alok Arora, Advocate for the Appellant
Shri Virendra Choudhary, SDR for the Respondent

CORAM:

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

Date of Hearing/Decision: 25.2.2009

FINAL **ORDER NO . 214 -217 / 09-EX**

Per M. Veeraiyan (for the Bench):

These four appeals are arising out of investigation commenced after visit by the officers on 27.3.97 and the facts are over-lapping and therefore, are being dealt with by a common order.

2. Heard both sides.

3. Relevant facts, in brief, are as follows:

a) When the officers visited the premises of the appellant-company, M/s. Arti Electrodes Pvt. Ltd., it was found that they were not registered with the Excise authorities and from the bill book maintained by them they have shown the clearance of goods valued totally as Rs.29,22,892/-. In the neighbouring premises, there was a firm by the name M/s. Jaipur Cement and Pipes & Agencies,(JCPA, for short) which was a trading concern. Shri S.S. Gulati was the Managing Director of the manufacturing company and he was also the power of attorney holder of JCPA. In his statement dated 27.3.97, Shri Gulati admitted selling goods worth more than Rs.6 lakh through JCPA, even though they have purchased goods worth only of Rs. 2 lakhs from the manufacturing firm. He claimed that the wide variation was due to cost of transportation, sales tax and trading profit.

b) On the date of visit, goods valued at Rs.1,53,337/- was found in the manufacturing unit and as the same had been manufactured without registering the unit with Excise authorities and as the same was not entered in the statutory records, as it was felt that they have exceeded Rs.30 lakhs exempted limit, the same were seized.

c) The show cause notice dated 24.9.97 was issued proposing confiscation of the said goods on the ground that they have not been accounted in spite of the fact that they have exceeded the exemption limit and they were intended for clearing without payment of duty. The order was passed confiscating the said goods and allowing them to be redeemed on payment of fine of Rs.35,000/- and demanding duty of Rs.12,267/- on seized goods and imposing penalty of Rs.10,000/-

d) Subsequently, another show cause notice dated 10.11.2000 was issued demanding duty of Rs.41,520/- for the period from 1.4.96 to 27.3.97 and proposing penalties on the manufacturing company and JPCA and Shri S.S.Gulati, Director of the manufacturing company cum power of attorney of the trading firm. The duty was demanded and equal penalty was imposed on the company. Penalty of Rs.25,000/- on JCPA and a penalty of Rs.10,000/- on Shri S.S.Gulati was also imposed.

4. Commissioner (Appeals) upheld the orders of the original authority in both the cases.

5. Learned advocate submits that JCPA was selling the products not only of M/s. Arti Electrodes Pvt. Ltd. but also buying and selling products of others. He also submits that the show cause notice dated 24.9.97 have been issued taking into account the fact of value of clearance as Rs.33,85,153/-, no new facts have been mentioned in the second show cause notice dated 10.11.2000. He also submits that all the statements including the second statement of Shri S.S. Gulati has been taken on or before 15.9.97 and therefore the second show cause notice have been issued after full facts have been in the knowledge of Department and , therefore, the demand by the second show cause notice is clearly time barred. He relied upon the decision of Hon'ble Supreme Court in Nizam Sugar Factory vs. CCE [2006 (197) ELT 465] and decision of the Tribunal in the case of Rattan Steel Works & Anr. Vs. CCE, Chennai [2008 (87) RLT 826 (CESTAT-Che)]. He also submitted that no penalty can be imposed on JCPA under Rule 173 Q as they are not a unit registered with Central Excise and therefore Rule 173 Q is not applicable. As regards, Shri Gulati, no penalty is imposable as he is no more which fact was also placed before the Commissioner (Appeals).

6.1 Learned SDR submits that the M/s. Arti Electrodes Pvt. Ltd. was not registered with Central Excise authorities on the date of visit of officers. It was prima facie noticed that they have effected clearance of more than Rs.33 lakhs and the goods lying unaccounted in the statutory records were seized. As there was time limit for issue of show cause notice for seized goods, the show cause notice dated 24.9.97 was issued for the limited purpose of confiscation of seized goods and demanding duty only on the said seized goods. The submission of the learned advocate that the investigation was completed on 15.9.97 is not correct. According to him, the investigation included detailed examination of records recovered from the premises of the manufacturing firm and the investigations were being carried out even after issue of first show cause notice relating to seizure of goods. He also stated that detailed statements of various dealers have been dealt with in the second show cause notice. Further, the statement dated 15.9.97 of Shri S.S. Gulati had been relied upon in the second show cause notice and therefore, the claim that two show cause notices were issued on identical facts is not correct. He also submits that 5 years extended period in respect of clandestine removal should be from the date of clearance and not from the alleged date of finalisation of the investigation.

6.2 As regards Shri S.S. Gulati, the learned advocate submits that he was not the appellant before the Commissioner (Appeals) but his case was not dealt with in the appeals of M/s. Arti Electrodes Pvt. Ltd. and JPCA.

7.1. We have carefully considered the submissions from both the sides and perused the records. It is noticed that Shri S.S. Gulati was the Managing Director of Aarti Electrodes Pvt. Ltd. and he also had power of attorney for the firm JPCA. He has claimed that difference in value of turnover between the procured value of Rs 2 lakhs and the sale value of Rs. 6 lakhs is attributable to transportation, sales tax and trading profit. This in our opinion, is not convincing. If the same goods could be sold at such massive margin by Shri Gulati from the neighbouring trading firm, no reason has been given as to why the same could not be sold by him as the managing director of the manufacturing company. At any rate, if JPCA was dealing also with the goods of other manufacturers, the same was not revealed in his statement given on 27.3.97 and there was no retraction of the said statement for considerable period. Therefore, we agree with the findings that the statement dated 15.9.97 is an afterthought as held by the authorities below. Therefore, we hold that the value of clearances adopted by the authorities below in confirming the differential duty is to be sustained.

7.2 The plea that the goods worth Rs.1,27,040/- relate to defective goods returned back has not been supported by any evidence. Therefore, the decision of the Commissioner (Appeals) in this regard appears to be reasonable.

7.3 Regarding invocation of extended period, learned advocate heavily relied on decision of Hon'ble Supreme Court in the case of Nizam Sugar Factory cited supra. In the said case, first show cause notice demanding duty for the period February, 1978 to September, 1982 was issued on 28.2.1984 and second show cause notice dated 16.7.87 was issued for later period namely 1982-83 to 1986-87. In that context, the Hon'ble Supreme Court held that subsequent show cause notices on same or similar facts could not be issued alleging suppression of facts on the part of the assessee. In the present case, the facts are entirely different. Here the first show cause notice did not deal with any demand of duty for the earlier period where clearance were effected without registration with Central Excise department and without following the Central Excise formalities. The first show cause notice mainly focused on offence relating to goods seized on 27.3.97 and was issued in the context specific time limit of six months for issue of show cause notice prescribed in the law. Further the statement taken from Shri S.S. Gulati dated 15.9.97 was not relied upon in the first show cause notice. We also find detailed submissions of various dealers have been relied upon in the show cause notice dated 10.11.2000 which have not been relied upon in the first show cause notice as the same were not directly relevant to issues dealt with in the first show cause notice. We agree that the first show cause notice and second show cause notice proceed on the basis that the value of clearance has exceeded Rs.30 lakhs. To that extent, the learned Advocate is correct in saying that some facts are common. Though the foundation for the cases in both the show cause notices appears to be the same, we do not agree that both the show cause notices are on identical facts. We also find that the facts of this case are not same as facts in the case of Rattan Steel Works & anr. relied upon by the learned advocate. In that case, there is a clear finding that investigation was completed in April, 1997 and the show cause notice was issued on 11.8.98 and that the confessional statements of the partner/assessee in the said case were retracted immediately after recording the statements. This is not the case in the present case.

7.4 We have not been shown that Shri S.S. Gulati has filed any appeal before the Commissioner (Appeals). Commissioner (Appeals) has made a passing reference in the order about sustainability of penalty on Shri S.S. Gulati. However, taking into account that Shri S.S. Gulati is no more, we set aside the penalty, if sustained by the Commissioner (Appeals). The submission of learned Advocate that JPCA is not the assessee and rule 173Q cannot be invoked appears reasonable and acceptable, the penalty on JPCA is set aside.

7.5. As regards the confiscation of the goods, as they were manufactured without registering with Excise authorities and were not entered in the statutory records even after crossing the exemption limit, the order of confiscation is upheld. However, redemption fine is reduced from Rs.35,000/- to Rs.5,000/- (Rupees Five thousand only) and the penalty in respect of seized goods is reduced from Rs.10,000/- to Rs.5,000/- (Rupees Five thousand only).

7.6. We sustain the demand of duty in respect of clearances made from 1.4.96 to 27.3.97. However, considering that there was dispute on the eligibility of exemption applicable to small scale unit and considering that there is no specific finding of clearance of goods in excess quantity, we reduce the penalty from Rs.41,520/- to Rs.10,000/- (Rupees Ten thousand only).

8. The appeals are disposed of on the above terms.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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