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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/6 /2006 - EX[DB] Date 19/08/2009

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

To :
M/S OPAL AUTO INDUSTRIES
56,INDUSTRIAL AREA PHAGWARA PUNJAB

M/S OPAL AUTO INDUSTRIES Appellant
Vs
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 529/2009-**EX[DB]** dated 07-8-09 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. JALLANDHAR(HQ. AT CHANDIGARH)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(Excise Appeal Branch)

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

E/Appeal No.6/2006-Ex(Br)

(Arising out of order in original No.117/CE/Jal/05 dated 29.9.2005 passed by the Commissioner of Central Excise, Jalandhar)

M/s. Opal Auto Industries — Appellant

Vs

CCE, Jalandhar — Respondent

Appeared for the Appellant : Shri K.K. Anand, Advocate
Appeared for the Respondent : Shri Vijay Kumar, SDR

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing: 4.8.09

FINAL Order No. 529 / 2009- EX /2009

Per D.N. Panda:

Learned Counsel Shri Anand submits that consequent upon passing of the order by the learned Commissioner on 29.9.2005, direction made by him was carried out by the learned Assistant Commissioner. The direction was for verification of documents to decide quantum of modvat credit admissible to the appellant. That was done by that Authority. As a result, as against the disputed duty demand of Rs.13,45,141/-, modvat credit to the extent of

Rs. 10,34,331/- admissible was set off. Consequently, the disputed demand was reduced to Rs. 3,10,810/-

2. Shri Anand learned Counsel submits that all that has resulted in reduction of the demand was consequent upon de-novo adjudication made since Tribunal by order dated 6th September, 2002 in Appeal Case No.641/2002 had directed for such purpose. Sequel to this order passed by the Tribunal there was another order passed by that forum on 6.2.2004 disposing application for rectification of mistake with certain direction with respect to remand of the penalty.

3. Shri Anand learned Counsel further submits that while appellant's grievance has been considered by the Tribunal by aforesaid orders and also the learned Commissioner, the appellant was allowed necessary benefit of consequence of law in terms of order dated 7.7.2006 by the Assistant Commissioner. In view of such a position, the appeal of the appellant presently before the Tribunal to the extent of duty demand has become infructuous. But, so far as the quantum of penalty is concerned, that needs re-determination in view of the benefit given to the appellant as aforesaid resulting duty liability of Rs.3,10,810/-, as against earlier demand of Rs.13,45,141/-. There was no intention by the appellant to evade the duty element in the above transaction. This appellant is a partnership firm and one of the partners owns the brand name. Therefore, the case should not be looked from the angle of evasion of duty at all. He prays that the matter should go

back to the learned Commissioner to look into the penalty issue afresh and pass appropriate order.

4. Revenue's grievance is that the appellant did not provide any information as to use of the brand name belonging to others. Neither any declaration was made nor any document was filed before the Department to know use of brand name by the appellant. When there is no information before the Department, the appellant is not entitled to immunity of penalty.

5. Heard both the sides and perused the record.

6. There is no dispute by both sides that the disputed duty demand of Rs. 13,45,141/- has been reduced to Rs. 3,10,810/- consequent upon giving effect to the direction made by the learned Commissioner by his order dated 29.9.2005 following Appellate direction of Tribunal. Both parties having resolved their dispute against the duty demand as above, none of them have appealed against the order dated 7.7.2006 passed by the learned Assistant Commissioner. Therefore, there is no issue before us as to the duty demand aspect as aforesaid.

7. The limited prayer before us is whether there shall be penalty against the appellant in view of the aforesaid scenario. If so, what shall be the quantum.

8. We have gone through pages 10,11 and 12 of the impugned order. There is nothing visible from the order as to intention to evade the duty. Unless such aspect is ascertained from the record, there cannot be mechanical imposition of penalty. This we say following the decision of the Apex Court in the case of Union of

India Vs Rajasthan Spinning & Weaving Mills reported in 2009 238 ELT 3 (SC). Therefore, it has become inevitable necessity to hear the penalty aspect afresh by the learned Adjudicating Authority in view of the aforesaid factual scenario and give a proper finding as to whether the penalty proposed by show cause notice shall be leviable. If so, quantum of penalty that shall be exigible. With the aforesaid observation and finding, we make a limited remand to the learned Adjudicating Authority to carry out the direction in respect of the penalty only and pass a reasoned and speaking order granting fair opportunity of hearing to both sides.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*

(Rakesh Kumar)
Technical Member