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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/6063/2004 - EX[DB] Date 08/09/2009

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

To :
C.C.E.MEERUT-I
UNIVERSITY ROAD,MANGAL PANDAY
NAGAR,MEERUT
C.C.E.MEERUT-I Appellant
Vs
M/S FABRICO INDIA(P)LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 631/2009-**EX[DB]** dated 01-9-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S FABRICO INDIA(P)LTD.
DELHI ROAD,
RITHANI MEERUT
2. Adv. / Consult
NONE

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
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18 HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

COURT-I

Date of hearing/decision: 01.09.2009

Excise Appeal No. 6063 of 2004
[Arising out of Order-in-Appeal No.562-CE/MRT-I/2004 dated 20.9.2004 passed by the Commissioner (Appeals), Central Excise, Meerut]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, 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.	Yes
2	Whether it should 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	[illegible]

CCE, Meerut-I — Appellant

Vs.

M/s Fabrico India (P) Ltd., — Respondent

Appearance:

Appeared for the Appellant – Shri Surinder Shah, DR

Appeared for the Respondent – None

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

FINAL Oral Order No. 631/09-EX

Per : Shri Justice R.M.S. Khandeparkar:

Heard the learned DR for the appellant. None present for the respondents.

2. The appellant challenge the order dated 20.09.2004 passed by the Commissioner (Appeals) Meerut whereby the lower appellate authority has set aside the order passed by the original authority, Meerut. The Joint Commissioner vide his order dated 31.03.2004 had confirmed the demand against the respondents to the tune of Rs. 13,91,486/- under proviso to Section 11A of the Central Excise Act, 1944 alongwith the interest thereon in terms of Section 11AB of the said Act and had also imposed equal amount of penalty under Section 11AC of the said Act read with Rule 25 of the Central Excise Rules, 2002. The Joint Commissioner had granted credence to the modvat credit amounting to Rs.8,26,264/- while deciding the actual duty liability of the respondent.

3. The lower appellate authority, though has agreed with the findings arrived at by the original authority in relation to the merits of the case, has held that the demand of duty cannot be sustained as the same is hit by law of limitation, and consequently question of penalty does not arise. While arriving at the said finding, the lower appellate authority has also held that there has been no suppression of facts so as to invoke extended period of limitation under Section 11AC of the said Act read with proviso to Section 11A.

4. The facts in brief, relevant for the decision are that the respondents are engaged in the manufacture of trusses, purlins to support roofs made of M.S. Tubes/ Pipes and had been clearing the same as pre-fabricated building falling under chapter sub-heading No. 9406.00 of the Central Excise Tariff Act, 1985. Pursuant to the visit of the Officers of the Excise Department, a show cause notice dated 30.07.2003 came to be issued to the respondents requiring the respondents to show cause as to why the duty to the tune of Rs.13,91,486/- should not be demanded on the ground that the product which is being manufactured by the respondents is not the pre-fabricated building falling under chapter heading 9606.00 but is in the nature of M.S. Tubes/Pipes falling under chapter sub-heading No. 7308.90, and consequently the differential duty as above was leviable against

the said product and recoverable from the respondents. The notice was contested by the respondents and consequently the order dated 31.03.2004 came to be issued by the original authority as stated above. While arriving at the finding relating to the duty liability, the original authority held that the respondent had suppressed the fact that they were actually manufacturing the product classifiable under heading 7308.90 of the Central Excise Tariff Act, 1985 and thereby they evaded the duty to the tune of Rs. 13,91,486/- for the year 1998-99 to 2001-02, i.e. upto February, 2002. Being aggrieved, the matter was carried in appeal by the respondents before the Commissioner (Appeals). The lower appellate authority by order dated 20.09.2004 though confirmed the finding that the product which is manufactured by the respondents is in the nature of the one which is classifiable under sub-heading 7308.90 and not under sub-heading 9406.00 held that the fact that the respondents were manufacturing the product of the nature which has been actually manufactured by them was in the knowledge of the department and, therefore, the claim for duty and penalty was barred by law of limitation, and in the absence of suppression of facts, the provisions regarding extended period are not attracted.

5. Taking us through the orders passed by both the authorities as well as show cause notice, the learned DR submitted that the finding of the lower appellate authority regarding bar of limitation is not sustainable as records disclose that there was a clear case of mis-declaration under rule 173B in respect of the product manufactured by the respondents and mere occasion to visits by the excise authorities to the factory of the respondents or receipt of invoices describing the product as "fabrication and supply of tubular trusses/structures" cannot be construed as complete knowledge about the actual nature of the product manufactured by the respondents so as to justify the finding about absence of suppression of facts by the respondents. Being so, according to the learned DR the lower appellate authority erred in setting aside the order passed by the original authority demanding duty and imposing penalty.

6. The fact that there was mis-description of the product manufactured by the respondents in the declaration submitted by the respondents under Rule 173B is clearly borne out from the records and concurrent finding to that effect by both the authorities. There is no cross-objection filed by the respondents. Being so, the said finding has attained finality as far as this matter is concerned.

7. The point for consideration which remains is related to the issue pertaining to bar of limitation for demanding the duty and imposing the penalty in the facts of the case. The assessment of materials on record by both the authorities below as well as what is sought to be contended by the appellants in their memo of appeal, it is apparent that the respondents had been manufacturing the product in the form of steel structure frames pursuant to the declaration filed by them under Rule 173B describing the product as pre-fabricated building classifiable under sub-heading 9406.00 with the necessary approval thereof by the excise authorities since 1992. It is also apparent from the records and findings arrived at by the lower authority that the product so manufactured by the respondents was being cleared with the invoices describing the same as "fabrication and supply of tubular trusses/structures". It is also not in dispute that the departmental officers had been occasionally visiting the factory premises of the respondents. Needless to say that the unit of the respondents was inspected and was subjected to audit by the concerned excise authorities. In the background of these facts, the lower appellate authority has arrived at a clear finding that-

> "It is further observed that the appellants after obtaining Central Excise Registration No. 3/Ch./94/R-I/MRT/92 had been manufacturing said goods right from beginning and clearing the same under sub-heading 9406.00 after payment of duty @ 8% adv. till 1999-2000, they had filed classification declaration under Rule 173-B for the said goods alongwith process of manufacture. I have seen photocopies of two of such classification list effective from 01.3.2000. The classification list effective from 01.03.2000 bears the signature of the Deputy Commissioner, Central Excise, Division-Meerut. Evidently, the matter was in the knowledge of the jurisdictional Deputy Commissioner. Further, the appellants cleared the

goods under dispute on invoices issued under Rule 52-A of CER, 1944. On these invoices description of the goods is mentioned as per declaration filed under Rule 173-B. It is also observed that the Central Excise officers and the audit parties during their visit to the appellant's unit and during the course of audit has seen the declaration filed under Rule 173-B. Audit of the unit has also been conducted under E.A-2000. In E.A.2000, auditing party took a round of the unit and witness /study manufacturing process".

8. A plain reading of the above analysis of the materials and findings arrived at regarding the bar of limitation needs no further discussion by this Tribunal on this issue. It is really painful to note that an amount to the extent of about Rs. 6 lakhs and odd as duty besides interest and penalty for the period 1998-99 to 2001-02 was allowed to go down the drain either by sheer gross negligence and/or connivance on the part of the excise authorities with the concerned party. In such circumstances, we do not find any case having been made out by the Department for interference in the impugned order. Indeed, it is a sheer waste of time of the Tribunal as well as the energy on the part of the department in filing this appeal rather than to take proper action against the erring officers of the department.

9. For the reasons stated above, we find no case to interfere with the order passed by the Commissioner (Appeals) and hence the appeal fails and is hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/