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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/131 /2006 - EX[DB]

Date 08/10/2009

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

To :
SINGHAL TRADING CO.
B-60, GROUP WAZIRPUR INDL. AREA, DELHI

SINGHAL TRADING CO. — Appellant

Vs

C.C.E. DELHI I — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 757/ **2009 EX[DB]** dated 01-10-09 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. DELHI I
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult
   MR.R.PAL SINGH (CONSLT)
   84, DARYAGANJ, N.DELHI
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)
16. Office Copy
17. Guard file

Assistant Registrar
(Excise Appeal Branch)

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

E/Appeal No.131/2006-Ex(Br)

(Arising out of order in appeal No.123/CE/DLH/2005 dated 18.10.2005 passed by the Commissioner of Central Excise(Appeals), New Delhi)

M/s Singhal Trading Co. — Appellant

Vs

CCE, Delhi — Respondent

Appeared for the Appellant : Shri R. Pal Singh, Consultant
Appeared for the Respondent : Shri Sunil Kumar, DR

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

Date of Hearing: 2.9.09

FINAL Order No. 757/09-EX /2009

Per D.N. Panda:

Learned Counsel Shri R. Pal Singh submits that when there was no commencement of manufacture itself, there cannot be any closure. Had manufacturing been commenced, that would have been done in the factory. For reasons beyond control, no manufacturing operation could be carried out. Anticipating that manufacture shall be carried out, appellant obtained permission under Rule 15 of the Central Excise Rules, 2002 and that was granted. When the appellant could not commence manufacture, Revenue has come with show cause notice alleging that the appellant did not intimate to the department as to its closure for which the levy that was determined under rule 15 of Central Excise

Rules, 2002 shall be recoverable for the period from July, 2003 to March, 2004 under Section 11-A of Central Excise Act, 1944 read with Notification No.34/2001-CE(NT) dated 20.6.2001.

2. Learned AR for assessee submits that none of the ingredients of Section 11-A of Central Excise Act, 1944 is present in the impugned adjudication. Therefore, not only Section 11A is not invokable but also the impugned levy is recoverable. Similarly other consequence of law shall not follow. There is no evidence that the appellant has commenced manufacture. Shri Pal, AR also submits that in reply to show cause notice, the appellant has stated to the authorities that unless there is production, no duty becomes payable. Even if machines have been installed, in absence of production, duty is not payable. It was replied that the department has not gathered any evidence against the appellant to show that manufacture was done nor also seized any goods at any point of time. Therefore, mere grant of permission for production shall not *ipso facto* call for levy of duty.

3. Learned DR Shri Sunil Kumar supports order of the authorities below and submits that if permission was granted, Assessee was duty bound to intimate the authorities that it should be excluded from the purview of the Scheme. In absence of intimation, duty liability was called for the period from July, 2003 to March, 2004.

4. Heard both sides and perused the record.

5. It appears from the reply to the show cause notice that the appellant has categorically brought to the knowledge of the department that there was no manufacture carried out by it. Also

it was brought out by the appellant that in absence of production, no goods were found by the department to have been manufactured nor even there was evidence to show that the appellant had carried out manufacture. We do appreciate that the scheme of excise levy is to levy duty only in the event of manufacture. Such event is absent without any contrary evidence on record by Revenue. However, to resolve the dispute whether there was any manufacture carried out, the authorities have now to enquire from various quarters to satisfy as to whether there was manufacture carried out by the appellants.

6. The appellant stated that machines were installed. If appellant had sought registration with the Industries Department of the Government, necessary evidence can be gathered from that quarter. So also the appellants must have applied for power connection. Similarly labour records, if any, maintained by the appellants and returns submitted to the labour department may suggest about the activity of the appellant. These are some of the sources of enquiry and not an exhaustive list. Conducting an objective enquiry, learned adjudicating authority can come to a proper conclusion as to whether there was any manufacture carried out by the appellant. If he comes to the conclusion that there was no manufacture, there is no reason for levy of duty at all.

7. With the aforesaid observation, we send the matter back to the learned Adjudicating Authority to enquire and support his decision with evidence in denovo proceeding.

8. In the result, impugned order is set aside and the matter is remanded to the learned adjudicating authority to grant fair opportunity of hearing and decide the matter afresh in accordance with law.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*