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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/481 /2005 - EX[DB] Date 09/12/2009

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

To :
M/S SHIVANI LOCKS P.LTD.
58-60,SECTOR-27A,FARIDABAD

M/S SHIVANI LOCKS P.LTD. Appellant
Vs
C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1275/ 2009 EX[DB]** dated 12-11-09 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 IV
   NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult
   MR.YOGESH KUMAR SAXENA
   20,SECTOR-46, FARIDABAD-121003
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
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No.2, R.K.Puram, New Delhi-110066.**
**Principal Bench, New Delhi.**

**Excise Appeal No.481/05**

[Arising out of Order-in-Appeal No.63-CE/Appl/Div.1/Delhi-IV/2004 dt.29.10.04 passed by the Commissioner(Appeals),Faridabad)

For approval and signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member Technical

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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?

2.Whether it would be released under Rule 27 of : the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3.Whether their Lordships wish to see the fair : copy of the order?

4.Whether order is to be circulated to the : Department Authorities:

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M/s. Shivani Locks P. Ltd. Appellant

Versus

CCE, Faridabad Respondent

Appearance

None for Appellant

Sh. S.Shah, Authorised Departmental Representative(DR)
For Respondent

Date of hearing: 12.11.09
Date of decision: 12.11.09
Final Order No. 1275/09-EX

**Per Rakesh Kumar**

The appellant in their factory at Plot No.58-60, Sector 27A, Faridabad(Plant I) manufacture door lock assembly for motor vehicles, chargeable to Central Excise Duty under sub-heading 8301.00 of the Tariff. They have another factory at 14/6, Mathura Road, Faridabad(Plant II) engaged in manufacture of "latch locking system" and "window regulators" falling under sub-heading 8301.00 and 8708.00 of the Tariff, respectively. The appellant during the period from 17.6.2000 to 30.6.2000 and 1.7.2000 to 31.3.2000 transferred certain quantity of the parts of "latch locking system" from Plant I to Plant II on payment of duty on the cost of production, while according to Department during 17.6.2000 - 30.6.2000 period, duty should have been paid on the cost of production plus profit margin and during 1.7.2000 - 31.3.2003 period, duty should have been paid on 115% of the cost of production. It is on this basis that a show cause notice dated 9.6.03 was issued for demand of differential duty amounting to Rs.17067/- alongwith interest, and imposition of penalty under Section 11AC. The show cause notice was issued invoking extended period under proviso to Section 11A(1) alleging willful mis-statement and suppression of facts with intent to evade the payment of duty. The Assistant Commissioner vide order-in-original dated 31.3.04 –

(a) Confirmed the duty demand alongwith interest and ordered appropriation of an amount of Rs.17067 + interest of Rs.4696/- already paid towards the duty demand; and

(b) Imposed penalty of Rs.17067/- under Section 11AC and penalties of Rs.10,000/- each under Rule 173Q(1) of Central Excise Rules,1944 and Rule 25(1) of the Central Excise Rules,2002 on the appellant.

1.1 On appeal to Commissioner(Appeals), the Commissioner(Appeals) vide order-in-appeal dated 25.10.04 while upholding the duty demand and interest on duty and penalty under Section 11AC, set aside the penalties imposed under Rule 173Q(1) of Central Excise Rules,1944 and Rule 25(1) of the Central Excise Rules,2002. It is against this order of Commissioner(Appeals), that this appeal has been filed challenging the invoking of extended period and imposition of penalty under Section 11AC.

2. None appeared for the Appellant. Shri S.Shah, the learned Departmental Representative, defended the impugned order reiterating the Commissioner(Appeals)'s findings.

3. We have carefully considered the submissions of the learned Departmental Representative and perused the records. During period prior to 1.7.2000, in respect of goods cleared for captive consumption, in terms of the provision of Rule 6(b)(ii) of the Central Excise Valuation Rules,1975, duty was required to be paid on cost of production plus profit margin, which the Appellant would have normally earned, and during period, w.e.f. 1.7.2000, duty on such goods cleared for captive consumption, in terms of the provisions of Rule 8 of the Central Excise Valuation Rules,2000 was required to be paid on 115% of the cost of production, and thus, as such there was short payment of duty as the same had been paid only on the cost of production. However, on going through the records we find that only normal limitation period, was available to the Department for recovery of short paid duty and there was no basis for invoking extended period under proviso to Section 11A(1) and penal provision under Section 11AC in view of the following –

(1) The short payment of duty is only Rs.17067/- which on being pointed out was paid by the Appellant alongwith interest immediately on being pointed out. Since the duty, paid by Plant No.I on any goods cleared to Plant No.II was available as Cenvat Credit to Plant No.II, it is unlikely that there could be any intention to evade the duty by mis-statement or willful suppression of facts.

(2) It is not the allegation of the Department that during the period of dispute, the ER-1 returns were not being filed or these clearances were not declared in these returns. The ER-1 returns are supposed to be scrutinized by the jurisdictional Range Officers.

(3) Hon'ble Supreme Court, in a series of judgments, in cases of Pushpam Pharmaceuticals Co. vs CCE, Bombay reported in 1995(78)ELT.401(SC), Continental Foundation Jt. Venture vs CCE, Chandigarh reported in 2007(216)ELT.177(SC) and CCE vs Chemphar Drugs & Liniments reported in 1989(40)ELT.276(SC) has held that since the expression – "suppression" or 'willful mis-statement' in proviso to Section 11A(1) are accompanied by very strong words like "fraud" or "collusion', the same have to be construed strictly and mere omission to give correct information will not amount to suppression unless it was deliberate with intention to evade the payment of duty, that suppression means failure to disclose full information with intent to evade the payment of duty and when facts are known to both the parties, omission by one party to do what he might have done will not amount to suppression and that for invoking extended period, some thing positive other than mere inaction or failure on the part of the manufacturer – conscious or deliberate withholding of information when the manufacturer knew otherwise, is necessary.

3.1 In this case, none of the criteria for invoking extended period are satisfied. The criteria for invoking extended period under proviso to Section 11A and for imposition of penalty under Section 11AC are identical. Hence neither extended period for recovery of duty is invokable nor penalty under Sectin 11AC is imposable.

4. In view of above discussion, the duty demand is upheld only for the normal limitation period and the duty demand for the period beyond the normal limitation period as well as the penalty under Section 11AC is set aside. The appeal is partly allowed.

(The operational portion of the order pronounced in the Court).

(Justice R.M.S.Khandeparkar)
President

(Rakesh Kumar)
Member Technical

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