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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/1368/2009-1374/2009 - EX[DB]
E/S/1412-1418/2009-EX

Date 16/12/2009

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

To :
M/S MINOCHA METALS (P) LTD
409, PATPARGANJ INDUSTRIAL AREA, DELHI.
110092

M/S MINOCHA METALS (P) LTD — Appellant
Vs
C.C.E. DELHI II — Respondent

STAY ORDER NO.1410-1416/2009-EX

I am directed to transmit herewith a certified copy of **Final order No. 1379-1385/ 2009 EX[DB]** dated 06-11-09 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 II
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
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)
16. Office Copy
17. Guard file
18. HON'BLE PRESIDENT.
19. M/S MANOJ AUOT INDUSTRIES
    G-39, JAGATPURI, DELHI.

Assistant Registrar
(Excise Appeal Branch)

P. T. O. -2,

20. M/S MINOCHA BROTHERS
28/28-A, GALI NO 16, VISHWAS NAGAR, SHAHDARA,DELHI.

21. M/S R.K.TRADING CO
589, JHEEL KURANJA, DELHI.

22. SH HARISH KUMAR MINOCHA
DIRECTOR OF M.S MINOCHA METALS (P) LTD, 409,
PATPARGANJ INDUSTRIAL AREA, DELHI.-92

23. SH MAHESH KUMAR MINOCHA
PROP OF M/S R.K. TRADING CO, 589, JHEEL KURANJA, DELHI.

24. SH MANOJ KUMAR MINOCHA
PROP M/S MANOJ AUTO INDUSTRIES, G-39, JAGATPURI,
DELHI.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 06/11/2009.
DATE OF DECISION : 06/11/2009.

Excise Appeal No. 1368 of 2009

M/s Minocha Metals (P) Ltd. — Appellants

Versus

CCE, Delhi – II — Respondent

Excise Appeal No. 1369 of 2009

M/s Manoj Auto Industries — Appellants

Versus

CCE, Delhi – II — Respondent

Excise Appeal No. 1370 of 2009

M/s Minocha Brothers — Appellants

Versus

CCE, Delhi – II — Respondent

Excise Appeal No. 1371 of 2009

M/s R.K. Trading Company — Appellants

Versus

CCE, Delhi – II — Respondent

Excise Appeal No. 1372 of 2009

Shri Harish Kumar Minocha
(Director of M/s Minocha Metals (P) Ltd.) — Appellants

Versus

CCE, Delhi – II — Respondent

Excise Appeal No. 1373 of 2009

Shri Mahesh Kumar Minocha — Appellants

Versus

CCE, Delhi – II — Respondent

Excise Appeal No. 1374 of 2009

Shri Manoj Kumar Minocha — Appellants
(Proprietor of M/s Manoj Auto Industries)

Versus

CCE, Delhi – II — Respondent

[Arising out of the Order-in-Original No. 5/2009 dated 16/02/2009 passed by The Commissioner of Central Excise, Delhi – II.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri P. Karthikeyan, 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 would 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 Department Authorities?	: Yes

Appearance

Shri K.K. Anand, Advocate – for the Appellants.

Shri Surendra Shah, Authorized Representative (SDR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri P. Karthikeyan, Member (Technical)

FINAL Order No. 1379-1385/09-EX Dated : ____________

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

Since common question of law and facts arise in all these appeals, they were heard together and are being disposed of by this common order.

2. We have heard the learned advocate for the appellants and learned DR and perused the records. All these appeals arise from order dated 16/2/09 passed by the Commissioner, Central Excise, Delhi – II. By the impugned order, the learned Commissioner has disposed of the proceedings pursuant to the remand of the matter by the Tribunal under order dated 1st May 2006 in appeals No. 3804 to 3810 of 2003 and 1678 of 2004 and 757 to 759 of 2004.

3. By the said order, the Tribunal while disposing the appeals filed by the assessee, had remanded the matter to the Original Authority for determining the duty amounts and the penalties afresh with the following observation :-

> "In the circumstances, the assessable value adopted for the duty paid goods could rightly constitute the assessable value for clandestinely removed goods also. In this view of the matter, the case is required to go back to the original authority for deciding afresh the correct amount of duty payable by the manufacturers.

The quantum of penalty would also depend upon the amounts of duty payable."

4. The learned advocate while assailing the impugned order sought to raise various points in relation to methodology adopted for valuation of the product which were stated to have been removed clandestinely without payment of duty. However, it is not permissible for this Tribunal to go into those issues at this stage as the impugned order has been passed pursuant to the remand of the matter by the Tribunal and therefore the scope of adjudication before the Adjudicating Authority was limited to the remand order. The order of the Tribunal, the relevant portion as quoted above clearly discloses that the adjudicating authority had merely adopted the valuation for the goods clandestinely removed similar to the valuation in case of the goods which were cleared on payment of duty. The impugned order clearly discloses the Commissioner having adopted the same method while arriving at the value of the goods which were clandestinely removed and based thereon, the duty liability having been calculated. Being so, all the issues having been finally settled by the earlier order of the Tribunal and merely the amount of duty was required to be calculated alongwith the amount of penalty, we do not find any infirmity in the order of the Commission in that regard in the impugned order.

5. The learned advocate, however, is justified in contending that the Commissioner could not have imposed penalty on the proprietor in addition to the proprietary firm or vice-versa. Indeed the impugned order as far as it relates to the firms by name M/s MAI, M/s RKTC and M/s Minocha Brothers is concerned, they being proprietary concerns, the firm and the proprietor could not have been separately ordered to pay the penalty. The law in this regard is well settled.

6. Considering the same, the penalty of Rs. 1,00,000/- imposed on the proprietary concern M/s MIL as well as the penalty of Rs. 1,00,000/- imposed on the proprietary concern M/s Minocha Brothers are liable to be quashed. Similarly, penalty imposed on proprietary concern M/s RKTC to the extent of Rs. 1,00,000/- which is in addition to Rs. 1,00,000/- on the proprietor is also to be quashed.

7. The learned advocate for the appellants has also submitted that the Adjudicating Authority while imposing the penalty under various rules, has also imposed penalty under Section 11AC of the Central Excise Act, 1994. Indeed, the impugned order discloses that in case of the company M/s MMPL and the proprietary concern M/s MAI and M/s Minocha Brothers apart from imposing penalty under Section 11AC, the penalty has also been imposed on various other provisions of law. In fact, the penalty imposable and imposed

under Section 11AC is equivalent to the duty amount. The same having been imposed, and in the entire impugned order there being no disclosure of any justification for imposing penalty under other provisions of law, the advocate is justified in contending that the said penalty under other provisions of law is unsustainable. The same is accordingly, hereby quashed. Consequently the penalty of Rs. 2,00,000/- imposed on M/s MMPL under Rules 9 (1) 52A, 53, 173B, 173F, 173G and 226, the penalty of Rs. 1,50,000/- imposed on M/s MAI under Rule 9 (1) 52A, 53, 173B, 173F, 173G and 226 and penalty of Rs. 1,00,000/- imposed on M/s Minocha Brothers under Rule 9 (1) 52A, 53, 173B, 173F, 173G and 226 of the said rules are liable to be quashed and accordingly, hereby quashed.

8. Apart from the above modification, there is no case made out for interference in the impugned order and, therefore, the appeals are disposed of in the above terms.

(Justice R.M.S. Khandeparkar)
President

(P. Karthikeyan)
Member (Technical)

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