

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/936 -937/2006-SM[BR]

Date 09/01/2008

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

To :
CCE,LUDHIANA
C.R.BUILDING,RISHI NAGAR,LUDHIANA

CCE,LUDHIANA

M/S RAJIT PAINTS LTD,

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 21-22/2008-SM[BR] dated 5.12.2007
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S RAJIT PAINTS LTD,
MOMNABAD
ROAD,AKBARPURA,AHEMEGARH,DISTT.SANGRUR(PB)

2,M/SRAJIT PAINTS LTD,
C/O M/SRANJIT PAINTS LTD;—

2. Adv. / Consult

MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal Nos. 936-937 of 2006-SM

[Arising out of Order-in-Original No. 87/CE/CHD/2006 dated 13.2.2006
passed by Commissioner of Central Excise (Appeals), Ludhiana]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

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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 should 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 :
Departmental authorities?

Commissioner of Central Excise.
Ludhiana

Appellant

Vs.

M/s. Ranjit Paints Ltd.
Shri S.K. Sahoo, Sr. Commercial Executive

Respondents

Appearance: Shri B.S. Suhag, JDR for the Appellant
Shri Bipin Garg, Advocate for the Respondent

Date of decision : 5.12.2007

Final ORDER NO. 21-22/08-SM(BR)

Per S.S. Kang :

Heard both sides. The show cause notice was issued for demand of
duty in respect of goods found short and for imposition of penalties.

2. The adjudicating authority confirmed the demand of Rs.83,416/- and penalty of Rs.10,000/- under Rule 25 of Central Excise Rules on M/s. Rajit Paints Ltd. The adjudicating authority dropped the proceedings against Senior Commercial Executive for imposition of penalty. The Revenue as well as M/s. Rajit Paints Ltd. filed the appeals and the Commissioner (Appeals) in appeal filed by M/s. Rajit Paints Ltd. held that such duty and 25 percent of penalty was paid within 30 days of order passed by the adjudicating authority hence is in accordance with the provisions of Section 11AC of the Act.

3. In appeal filed by the Revenue, Revenue want to enhance the penalty to the equal amount as per provisions of Rule 11AC of the Central Excise Act on the ground that decision of the Tribunal in the case of CCE vs. Machino Montell reported in 2004 (168) ELT 466, was not accepted by the Revenue. The Commissioner (Appeals) held that the respondent has deposited 25% of the penalty amount in terms of Section 11AC which is sufficient as per the provisions of the Act, The Commissioner (Appeals) rejected the appeal filed by the Revenue. Now, the Revenue is against both the orders for enhancement of the penalty as well as imposing penalty on Shri S.K. Sahoo, Sr. Commercial Executive.

4. The contention of the Revenue is that as per the provisions of Section 11AC, if the duty and penalties is deposited within 30 days from the determination, it is sufficient compliance to the provisions of Rule 11AC of the Central Excise Act. The contention is that 25% of the penalty imposed is equal to the amount of duty. In the present case only penalty of Rs.10,000/-

was imposed. Therefore, the findings of the Commissioner (Appeals) that the deposit of 25% of penalty imposed is compliance to the provisions of Rule 11AC is not sustainable. The contention is that Shri S K Sahoo, who is authorized signatory, could not explain the shortages, therefore, he is also liable for penalty.

5. The contention of the respondent is that as per the decision of the Punjab and Haryana High Court in the case of CCE, Ludhiana vs. Sigma Steel Tubes reported in 2007 (82) RLT 361 (P & H) in case duty has been paid before issuance of show cause notice, the imposition of penalty is not sustainable. In the case of Sigma Steel Tubes, the Hon'ble High Court also considered the earlier decision of the High Court in the case of Machino Montell.

6. I find that respondents are situated in the jurisdiction of Punjab & Haryana High Court. The Hon'ble Punjab & Haryana High Court in the case of Sigma Steel Tubes (supra) relied upon the decision of Supreme Court in the case of Rashtriya Ispat Nigam Ltd. vs. Commissioner [2004 (163) ELT A 53] and held that in the case where the duty is paid prior to the issuance of show cause notice, penalty is not sustainable. In the present case, duty has been paid prior to show cause notice. In these circumstances, I find no ground to interfere with the order passed by the Commissioner (Appeals) in respect of penalty.

7. In respect of imposition of penalty on Shri S.K. Sahoo, I find that he was present at the time of verification of stock and he could not explain the reasons for shortage. There is no evidence on record to show that the

appellant cleared the goods without payment of duty. In view of absence of evidence regarding omission or commission in respect of Shri Sahoo with intent to evade payment of duty, I find no merit in the appeal in this regard.

Both the appeals are dismissed.

(Dictated in the open Court)

(S.S. Kang)
Vice President

Date: 5.12.07

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