

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/1130/2005-SM[BR]

Date 14/01/2008

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

To :
C.C.E. ROHTAK
SCO NO,6 SECTOR 1, ROHTAK.


C.C.E. ROHTAK

Appellant

M/S ANANT BELTING CORPORATION

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.64/2008-SM[BR] dated 26.11.2007 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 ANANT BELTING CORPORATION
G.T.ROAD, RAI (HARYANA)
2. Adv. / Consult
MR.R.PAL SINGH (CONSLT)
84, DARYAGANJ, 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, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**


Excise Appeal No. 1130 of 2005-SM (BR)

[Arising out of order in appeal No.02-03/AKG/RTK/2005 dated 6.1.2005 passed
by the Commissioner (Appeals) Central Excise, Gurgaon]

Date of Hearing/ Decision: 26.11.2007

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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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? | : | |
-

CCE, Rohtak

Appellants
[Rep. by Mr. S.L. Meena, DR]

Vs.

M/s. Anant Belting Corporation

Respondent
[Rep. by Mr. R. Pal Singh, Advocate]

CORAM: Mr. P.K. Das, Member (Judicial)

Final

Order No...../Dated:26.11.2007

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64/08-5M(BR)

Per P.K. Das:

Heard both sides and perused the records.

2. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of V. Belts classifiable under Chapter 40 of the Central excise Tariff Act, 1945. On 11.9.2002, the Central Excise Officers visited the respondents' factory and verified the stock of finished goods. They detected the shortage of stock of finished goods. The representative of the respondent admitted the shortage and stated that the belts might have been stolen. However, they have deposited the duty upon detection. The said officers also noticed that the respondent crossed the full exemption limit by Invoice NO.629 dated 11.9.2002. But the respondent failed to pay the duty after crossing the full exemption limit. However, the respondent also deposited the duty in respect of the said invoice. Thereafter, show cause notice dated 8.8.2003 was issued proposing demand of duty and imposition of penalty. The adjudicating authority confirmed the demand of duty and appropriated the said amount as deposited by the respondent. He also imposed the penalty under Section 11 AC of the Central Excise Act, 1944 of equal amount of duty. He also imposed penalty of Rs.25,000/- on Shri N.S.

● Khanna, Authorised Signatory under Rule 26 of the Central Excise Rules, 2002. The Commissioner (Appeals) upheld the confirmation of demand of duty and set aside the penalty upon the respondent and the Authorised Signatory.

3. The Revenue filed this appeal against the respondent company. Ld. DR on behalf of the Revenue submits that the Central Excise Officers detected the shortage of the finished goods during the stock verification and they failed to give account and, therefore, it appears that the goods were clandestinely removed. He further submits that the respondent failed to pay the duty after crossing of the full exemption limit, which was detected by the Central Excise Officers. Hence, the adjudicating authority rightly imposed penalty under Section 11 AC of the Central Excise Act, 1944.

4. Ld. Counsel on behalf of the respondent reiterates the findings of the Commissioner (Appeals). He submits that it is not a case of clandestine removal and the respondent deposited the duty before issuance of the show cause notice. He submits that the Hon'ble Punjab & Haryana High Court in the case of CCE Vs. Sigma Steel Tubes Ltd reported in 2007 (82) ELT 361 (P&H) held that penalty under Section 11 AC of the Act is not leviable when duty is paid before issue of show cause notice.

5. After hearing both the sides and on perusal of the records, I find that the shortage was detected during stock verification and the representative of the respondent stated that the goods might have been stolen. There is no material of clandestine removal of the goods. The Commissioner of Central Excise (Appeals) observed that there is no suppression of facts on the part of the respondent to evade payment of duty. Regarding the demand of duty on crossing of SSI exemption, it has been observed by the Commissioner (Appeals) if the intention of the respondent is to evade payment of duty, the value of these clearances would not have been shown in the invoice. I agree with the finding of the Commissioner (Appeals). It is seen that the respondent deposited duty before issue of show cause notice and there is no case of clandestine removal of the goods. The case is squarely covered by the decision of the Hon'ble Punjab and Haryana High Court. Accordingly, I do not find any reason to interfere the order of the Commissioner (Appeals). The appeal filed by the Revenue is rejected.

Order dictated & pronounced in open Court on 26.11.2007.

(P.K. Das)
Member (Judicial)

Ckp.