

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/1899/2006 & 2609 /2005-SM[BR]

Date 01/02/2008

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

To :

1. M/S OSWAL DYEING & FINISHING MILLS
 2. SHRI ATUL MALHOTRA
- BAHADURKE ROAD, DYEING COMPLEX, P.O.
BHATTIAN, LUDHIANA


M/S OSWAL DYEING & FINISHING MILLS

Appellant

Vs
Respondent

THE COMMISSIONER OF CENTRAL EXCISE
LUDHIANA

I am directed to transmit herewith a certified copy of Final order No. 225 -226 /2008 -SM[BR] dated 10.1.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF CENTRAL EXCISE
LUDHIANA
F-BLOCK, RISHI NAGAR, LUDHIANA

2. Adv. / Consult

MR.KAMALJEET SINGH
J-144, PATEL NAGAR -I,GHAZIABAD.

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)

basis and registered with the Central Excise Department. On 19.12.2003, the Central Excise officers intercepted a Matador loaded with fabrics. The driver of the tempo in his statement stated that one Ramesh loaded the goods at Gaushala road, Ludhiana. He could not produce any invoice or challan. In follow up action, it was found that the appellant No.1 purchased the goods from the open market without any bill/invoice. The appellant No.2 Shri Malhotra, partner of appellant No.1 in his statement stated that they have purchased the goods from the local market without any bills on cash basis and they are ready to pay the Central Excise duty on the goods seized. The adjudicating authority confiscated the goods and tempo and imposed redemption fine of Rs.75,000/- and Rs.50,000/- and penalty of Rs.14,860/- on appellant No.1. He also imposed a personal penalty of Rs.14,860/- on the appellant No.2. The Commissioner (Appeals) modified the adjudication order in as much as, the redemption fine on goods and tempo was reduced to Rs.25,000/- and Rs.20,000/- respectively and reduced penalty to Rs.5,000/- on appellant No.2.

2. The learned Advocate on behalf of the appellants submits that there is no dispute that appellant is not the manufacturer of the goods and therefore, they are not liable to pay the duty on the seized goods. He also submits that the appellant purchased the goods from the open market and there is no evidence that the goods are not duty paid. The confiscation and penalty are bad in law. He submits that the amount of redemption fine and penalty are excessive.

3. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that the appellant accepted the goods are cleared without

payment of duty and also admitted to pay the duty on the seized goods.

Therefore, demand of duty and penalty are absolutely correct.

4. After hearing both the sides and on perusal of the record, I find that the appellant purchased the goods from the open market without any invoice/bill and they have accepted to pay the duty on the seized goods in the statement before the Central Excise officers. I find that the adjudicating authority only confiscated the goods and imposed redemption fine on the seized goods and the tempo. In any event, it is admitted by the appellant No.1 to pay the duty on the said goods and therefore, confiscation of the goods is justified. However, I do not find any justification for confiscation of the tempo. It is seen that the appellant purchased the goods from the open market and there is no material that the appellant No.2 had any knowledge that the goods are liable for confiscation and therefore, imposition of penalty on both the appellants are set aside.

4. I find that the adjudicating authority has not confirmed the demand of duty. I find force in the submission of appellant that redemption fine and penalty on appellant No.1 ^{were} ~~is~~ excessive. The duty involved in this case is Rs.14,860/-. Accordingly, redemption fine on appellant No.1 is reduced to Rs.10,000/-. The penalty on both the appellants are set aside.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)