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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/695 /2006 Date 01/02/2008

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

To :
CCE,CHANDIGARH
C.R.BUILDING,SECTOR-17C,CHANDIGARH

CCE,CHANDIGARH Appellant
Vs
M/S SURINDRA ENGINEERING CO LTD, Respondent

I am directed to transmit herewith a certified copy of Final order No. 229/2008-SM[BR] dated 14.1.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

~~Assistant Registrar~~
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S SURINDRA ENGINEERING CO LTD,
   UNIT-II,VILL
   CHALHERO,RAJPURA,DISTT.PATIALA(PB)
2. Adv. / Consult
   NONE-----

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 Publictions (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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.695/2006-SM

(Arising out of order in appeal No.448/CE/Chd/05 dated 27.12.05 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh)

For approval and signature:

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

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?

Yes

CCE, Chandigarh — Appellant
(Rep. by Shri S. Gautam, SDR)

Vs

M/s Surindra Engg Co Ltd — Respondent
(Rep. by none)

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

Date of Hearing: 14.1.2008

Final Order No. 229/08-SM(BR)

Per P.K. Das:

Heard the learned DR and perused the record.

2. The respondents by their letter dated 8.1.2008, have requested to decide the matter in their absence on merits on the basis of their written

submissions. On 15.10.2003, the Central Excise officers visited the factory of the respondent and detected shortage of goods. The representative of the respondent submitted in his statement that the shortage was due to the record of production on the basis of average weight on the basis of formula and not on the basis of actual weighment. The respondent deposited the duty immediately before issuance of show cause notice. The adjudicating authority confirmed the demand of duty and appropriated the same as deposited by them. Penalty was imposed of equal amount of duty under Section 11AC of the Central Excise Act, 1944. The Commissioner (Appeals) set aside the penalty under Section 11AC of the Act.

3. After hearing the learned DR and on perusal of the record, I find that the adjudicating authority observed that the statement of the representative of respondent cannot be accepted and appears to be an after thought. It is seen from the record that the representative of the respondent recorded his statement at the time of visit of Central Excise officers and the same cannot be treated as an after thought. In any event, there is no material of suppression of fact with intention to evade payment of duty. Therefore, Section 11AC cannot be invoked. The Tribunal in a series of decisions set aside the penalty under Section 11AC of the Act, as under:-

a) CCE Ahmedabad Vs. Pole Star Industries Ltd
2007 (216) ELT 257

b) Nachiketa Papers Ltd Vs CCE Chandigarh
2007 (213)ELT 69

c) CCE Vs Malbro Appliances Pvt Ltd
2007 (208) ELT 503

d) Al-Falah (Exports) Vs CCE Surat-I
2006 (198) ELT 343

4. In view of the above, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*