

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

Date 21/02/2008

Appeal No. E/122 /2006-SM[BR]

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

To :
M/S R.U. ENTERPRISES
172, DSUDC SHEDS, OKHLA INDUSTRIAL
AREA, PHASE-I, NEW DELHI-19

M/S R.U. ENTERPRISES

C.C.E. DELHI III

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 334 /2008 -SM[BR] dated 31.1.2008 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ,
PHASE V, GURGAON - 122016 (HARYANA)

2. Adv. / Consult

MR. PRABHAT KUMAR

B-51(BASEMENT) SARVODAYA ENCLAVE NEAR MOTHER INTERNATIONAL SCHOOL 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)

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

E/Appeal No.122 /2006-SM

(Arising out of order in appeal No.152/CE/04 5.12.05 passed by the
Commissioner of Central Excise (Appeals), Delhi-I)

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?

M/s R.U. Enterprises

Appellant
(Rep. by Shri Prabhat Kumar, Advocate)

Vs

CCE, Delhi-III

Respondent
(Rep. by Ms Archana Pandey Mittal, Jt. CDR)

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

Date of Hearing: 31.1.2008

Final Order No. 334/08-SM (BR)

Per P.K. Das:

The appellants filed this appeal against the Order of Commissioner (Appeals) whereby the adjudication order was modified in so far as penalty of Rs.1,930/- was enhanced to Rs.1,79,297/-.

2. The learned Advocate submits that it is a small scale unit and is closed down. The appellant sent the stocks of finished goods and raw material to the job workers for processing. On 13.12.03, the Central Excise officers visited their factory and detected shortage of raw material and the finished goods over and above the balance in RG 23-A Part II goods. Shri Mohan Nair, Office Assistant could not explain the reason for shortage. Shri Rakesh Upadhaya, Proprietor of the unit explained the shortage for the reasons that the goods were sent for job work under challan. However, the appellants deposited the duty of Rs.1,77,367/- on the shortage on 15.12.2003. A show cause notice dated 29.5.2004 was issued for appropriation of duty amount as deposited by them and to impose penalty under Section 11AC of the Central Excise Act, 1944. The Adjudicating Authority appropriated the duty amount of Rs.1,77,367/- as deposited by them before issue of show cause notice. He also confirmed the demand of duty of balance amount of Rs.1930/- and imposed penalty of equal amount of duty under Section 11AC of the Central Excise Act, 1944, The Commissioner (Appeals) in the appeal of the Revenue, modified the adjudication order and enhanced the penalty to Rs.1,79,297/-.

3. The learned Advocate for the appellants submits that there is no intention to evade payment of duty. He further submits that the appellant is a small scale unit and is closed down. The goods were sent for job work and the appellants deposited the duty immediately and therefore, no penalty can be imposed under Section 11AC of the Act. The learned Advocate relied upon the decision of the Hon'ble High Court in the case of CCE Ludhiana Vs Sigma Steel Tubes reported in 2007 (82) RLT 361.

4. The learned Jt CDR reiterates the findings of the Commissioner (Appeals). She submits that the adjudicating authority imposed penalty under Section 11AC of the Act which was not challenged by the appellants and therefore, the Commissioner (Appeals) has rightly enhanced the penalty under Section 11AC. She relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CCE Ludhiana Vs Onkar Steel Tubes reported in 2008 (221) ELT 200.

5. After hearing both the sides, I find from the adjudication order that the adjudicating authority observed that it is a clear case of evasion of duty with malafide intention. He has imposed penalty ~~and~~ ^{of} equal amount of duty, the balance amount which was not deposited by them upon detection, under Section 11AC of the Act. It is seen that the appellants had not challenged the adjudication order before the Commissioner (Appeals). The submission of the learned Advocate that there is no intention to evade duty and there is no clandestine removal of goods, is not sustainable as they have not challenged the adjudication order in so far as imposition of penalty under Section 11AC of the Act. But, I agree with the learned Advocate that the appellants deposited the entire amount of duty before issue of show cause notice and the penalty should be reduced to 25% of the duty. I find that the Hon'ble Delhi High Court in the case of CCE Vs Malbro Appliances Pvt Ltd reported in 2007 (208) ELT 503 held that penalty equal to duty amount not leviable when duty was paid before issue of show cause notice as the first proviso to Section 11AC provides the levy of penalty of 25% of duty if duty determined paid within 30 days of passing of such order. In the present case, the appellant deposited the amount of Rs.1,77,367/- ^{out} of

Rs.1,79,297/- of duty before issue of show cause notice and respectfully following the decision of the Hon'ble High Court, penalty is reduced to Rs.40,000/-. The impugned order is modified. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)