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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/2480/2007-SM[BR]   Date 19/03/2008

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

To :
THE SR. GENERAL MANAGER
VEHICLE FACTORY, JABALPUR-482009

THE SR. GENERAL MANAGER   Appellant
Vs
C.C.E BHOPAL   Respondent

I am directed to transmit herewith a certified copy of **Final order No. 431 /2008 -SM[BR]** dated **6.2.2008**

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 BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE
   AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult SHRI. D.K. MISHRA ADV.
   C/O APPELLANTS-----------
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)

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.2480 of 2007-SM (BR)

[Arising out of order in original no.03/COMMR/CEX/2007 dated 19.2.2007 passed by the Commissioner of Central Excise, Bhopal]

Date of Hearing/ Decision:6.2.2008

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 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? :

No

The Sr. General Manager,
Vehicle Factory ...Appellants
[Rep. by Shri D.K. Mishra, Advocate.]

Vs.

CCE, Bhopal Respondent
[Rep. by Mr. S. Gautam, Authorized Representative (DR)]

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

Final Order No.431/2008-SM/Dated:6.2.2008

Per P.K. Das:

The appellant filed this appeal against penalty of Rs.25,000/- under Rule 173Q of the erstwhile Central Excise Rules, 1944. The Tribunal vide Final order No.829/06-SM (BR) dated 1.5.2006 remanded this matter to the Commissioner with the direction to give a specific finding on the claim of the appellant regarding exemption under Notification No.70/92-CE dated 17.6.92, as amended, and then pass an order on the issue of imposition of penalty. The Commissioner in the impugned order imposed penalty of Rs.25,000/-.

2. The Notification No.70/92-CE dated 17.6.92 provides that the manufacture shall undertake the responsibility of discharging the liability in respect of the central excise duty leviable on the final products. The findings of the Commissioner (~~Appeals~~) in the de novo adjudication order are as under:-

> " From the records available I find that none of the above conditions prescribed under the Central Excise Act and the Rules made thereunder has been fulfilled by the manufacturer. However, being an Ordnance Factory under the Ministry of Defence they have followed the procedure of their own through various documentations in respect of goods cleared to job workers and received back in their factory. I find the documentations adhered to by the assessee in this respect fulfill only part requirement of the procedures laid down under Rule 57F(3) and 57F (4). In view of the citation of Mangalore Chemicals & Fertilizers Limited V/s Deputy Commissioner reported in 1991 (55) ELT 437 (SC) referred to by the assessee, I agree that the omissions/procedural lapses made by the assessee are of technical nature and could be condoned. However, I find from the records that the then Ld. Commissioner has also considered all these facts and held in his OIO No.20/CEX/COMMR/2001 that as there was no loss to the Govt. revenue, the duty demanded was dropped. However, for not following the proper procedure prescribed under the Central Excise Act and the Rules made thereunder, he imposed a penalty of Rs.1,00,000/-. I fully agree that non adherence to the procedure under a statute is an offence punishable under the Act. However,

> the assessee's unit being a unit owned by the Ministry of Defence, Govt. of India, I take a lenient view in this case and impose a token penalty upon the assessee under Rule 173Q of the erstwhile Central Excise Rules, 1944 by reducing the penalty imposed earlier."

3. I find that it is an admitted position that the appellants have not fulfilled the conditions as laid down under Rule 57 F(3) and Rule 57F (4) of the erstwhile Central Excise Rules, 1944. The adjudicating authority had given a detailed finding for imposition of penalty, in compliance of the order of the Tribunal. Therefore, I do not find any justification to interfere the order of the Commissioner. The appeal is rejected.

Order dictated & pronounced in open court on 6.2.2008.

(P.K. Das)
Member (Judicial)

ckp.

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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

Date : 11/08/2008

MISC Order No. 208 -SM [BR]

Application E/ROM/34/2008

Appeal E/2480/2007-SM[BR]

1. Appellant
THE SR. GENERAL MANAGER
VEHICLE FACTORY, JABALPUR-482009
2. Respondent
C.C.E BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA HILLS,
BHOPAL (M.P.) 462011
3. Adv / Consult :SHRI D.K. MISHRA
M/S APPELLANT;------------
4. C.D.R
5. Bar Association, CESTAT, New Delhi.
6. M/s. Deeparchi Publications, M-93, Marg. 43, Saket, New Delhi.
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, Opp. Sachdeva P.T. College of Defence Colony, New Delhi - 110003
8. Excise & Customs cases, B-37, Sector -1, Noida - 201301 (U P)
9. R. Venkatraman, Constt. 44B, S. Suncity,Ghaziabad - 201010, U.P.
10. Director Publications, Customs, Excise. I.P. Estate, New Delhi
11. Taxmann Allied Service Pvt. Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026.
12. Co. Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 70
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard File

Assistant Registrar
(SM Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 25.7.2008

Excise ROM Application No. 34/2008-SM(BR) in
Appeal No.E/2480/2007-SM(BR)

M/s The Sr. General Manager — Appellant

vs.

CCE Bhopal — Respondent

Appearance:

Shri D.K. Mishra, Charge Man of Co. for the Appellant/Applicant
Shri A.K. Rastogi, DR for the Respondent

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

Misc Order No. 208/2008-SM(BR)

Per: P.K. Das

The applicant filed this application for rectification of mistake in Final Order No. 431/08-SM(BR) dated 06.02.2008.

2. After hearing both the sides and on perusal of the records, it is seen that the Tribunal upheld the Order of the Commissioner on the basis of detailed finding for imposition of penalty. It has been contended by the ld. Representative of the Applicant that the finding of Commissioner cannot held to be detailed finding for imposition of

penalty in absence of a notice to show cause. The Applicant contended in their application as well as during hearing this application that they have serious dissatisfaction with the order of the Tribunal. In my view, if the Applicant is dissatisfied with the order of the Tribunal, that cannot be rectified in ROM application, so, there is no mistake apparent on the face of records. Accordingly, the application is rejected.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta