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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 27/03/2008

Appeal No. E/1915/2006-SM[BR]

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

To :
M/S POLY PLASTICS
O-15, INDUSTRIAL AREA, YAMUNA NAGAR
(HARYANA)

M/S POLY PLASTICS — Appellant
Vs
THE COMMISSIONER OF CENTRAL EXCISE
PANCHKULA — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 479 /2008 –SM[BR] dated 16.1.2008 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
   PANCHKULA
   SCO NO 407 AND 408, SECTOR-8, PANCHKULA
   (HARYANA)
   134119
2. Adv. / Consult
   MR.R. SANTHANAM
   C-3/210, JANAK PURI, NEW DELHI - 110 058.
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.1915 /2006-SM

(Arising out of order in appeal No.21/GRM/PCK/06 dated 23.1.06 passed by the Commissioner of Central Excise (Appeals), Gurgaon).

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?

No.

M/s Poly Plastics — Appellant
(Rep. by Shri R. Santhanam, Advocate)

Vs

CCE, Panchkula — Respondent
(Rep. by Shri A.K. Rastogi, DR)

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

Date of Hearing: 16.1.2008

Final Order No. 479/08-SM(BR)

Per P.K. Das:

The relevant facts of the case in brief are that the appellants are engaged in the manufacture of Automobile parts. On 22.12.2004, the Central Excise officers visited the appellants factory and verified the record. It was detected by the said officers that the appellants availed credit on the basis of duty paying documents indicating SE copper wire which was not received by them. The appellants debited the duty in their RG 2A Part II register and duly informed the department by their letter dated 11.3.2005.Thereafter, show cause notice dated 16.6.05 was issued proposing demand of duty and to appropriate the amount as deposited and also to impose penalty under Section 11AC of the Central Excise Act, 1944. The Adjudicating authority confirmed the demand of duty and appropriated the amount as debited by them and imposed a penalty of equal amount under Section 11AC of the Act. The Commissioner (Appeals) upheld the adjudication order.

2. After hearing both the sides and on perusal of record, I find that the appellant reversed the credit after detection by the Central Excise officers during their visit. It is seen from the letter dated 6th January, 2005 that they have informed the Superintendent (Preventive) regarding the reversal of cenvat credit wrongly availed during the period June 2002 to December,

2004. Further by letter dated 11th March, 2005, they clarified the Superintendent of Central Excise that cenvat credit availed on duty paid goods was debited by entry Sl No. 2738 dated 11.3.05. In any event, it is seen that the appellant deposited the duty on the irregular credit before issue of show cause notice and requested to close the chapter. There is nothing on record that the appellant paid the duty under protest. Therefore, the submission of the learned advocate in respect of demand of duty is irrelevant. So, the adjudicating authority rightly appropriated the duty deposited by the appellants.

3. Regarding imposition of penalty, I find force in the submission of the learned Advocate. It is seen that the representative of the appellant in their statements stated that the supplier had erroneously mentioned the description of goods. The contention of the appellant is supported by the statement of supplier. In any event, there is no material of suppression of fact with intent to evade payment of duty. Therefore, Section 11AC of the Central Excise Act, 1944 cannot be invoked. Accordingly, appropriation of duty is upheld and penalty is set aside. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*