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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/164 /2007-165 /2007- SM[BR] Date 05/09/2008

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

To :
C.C.E.KANPUR
117/7, SARVODAYA NAGAR, KANPUR.

C.C.E.KANPUR Appellant
Vs
M/S FRONTIER ALLOYS STEELS LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1293 – 1294 / 2008 –SM[BR] dated 21.8.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

1. M/S FRONTIER ALLOYS STEELS LTD
2. SHRI CHETAN BHATIA DIRECTOR
25/5, KALPI ROAD, RANIA, KANPUR DEHAT

2. Adv. / Consult MR. AMIT AWASTI ADV.
113/ 145, SWAROOP NAGAR KANPUR -208002 [U.P]

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
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 Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 164-165 of 2007-SM

[Arising out of Order-in-Appeal No. 507 - 508/CE/APPL/KNP/06 dated 18.10.06 passed by the Commissioner (Appeals), Customs and Central Excise, Kanpur.]

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 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? : No.
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

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Commissioner of Central Excise Kanpur — Appellant

Vs.

1.M/s. Frontier Alloys Steel Ltd.
2.Shri Chetan Bhatia, Director — Respondent

Appearance: Mr. Sansar Chand, DR for the Appellant
Mr. Amit Awasthi, Advocate for the Respondent

Date of decision : 21.8.2008

Final **ORDER NO.** 1293-1294/2008

Per P.K.Das (for the Bench):

Both the appeals are arising out of a common order and, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of steel casting classifiable under Chapter 73 of the schedule to the Central Excise Tariff Act, 1985. On 3.8.04, the Central Excise officers visited the respondents factory and conducted stock taking of inputs ~~unfinished~~ and finished goods. The said officers detected shortage of inputs involving central excise duty of Rs.3,13,008/-. Shri Chetan Bhatia, director of the respondents in his statement admitted the shortage and paid the duty immediately. The adjudicating authority confirmed the demand of duty and appropriated the said amount as deposited by the respondents before issue of show cause notice. He also imposed penalty of equal amount under section 11AC of Central Excise Act, 1944 read with Section 25 of Central Excise Rules, 2002 on the respondent No. 1 and a penalty of Rs.One lakh upon Shri Chetan Bhatia, director of the appellant company under Rule 26 of the Central Excise Rules, 2002, respondent No.2 herein. Commissioner (Appeals) set aside the penalties on the respondents. Hence, the Revenue filed these appeal.

3. After hearing both the sides and on perusal of the records, it is seen from the show cause notice that Shri Chetan Bhatia, director of the respondent's company, respondent No. 2 herein, in his statement dated 3.8.04 admitted the shortage and stated that inputs have been removed from the factory premises without issue of central excise invoices and without

payment of central excise duty due thereon. So, I agree with the submission of the learned DR that it is a case of clandestine removal and section 11AC of the Act is to be invoked. The learned advocate on behalf of the respondents submits that there is no evidence of clandestine removal. He further submits that the charge of clandestine removal cannot be established on the basis of mere statement. He also submits that respondents paid the duty before the issue of show cause notice and therefore, section 11AC cannot be invoked. I find that the respondent No. 2 accepted the goods cleared without payment of duty. There is no retraction of the statement. Therefore, the submission ~~statement~~ of learned advocate is without any substance. However, I agree with the submission of the learned advocate that the respondents deposited the duty before issue of show cause notice and therefore, penalty should be 25% of duty.

4. The Hon'ble Delhi High Court in the case of Commissioner of Central Excise, vs. Malbro Appliances Pvt. Ltd. [2007 (208) ELT 503 (Delhi)] held that second proviso to section 11AC(1) of Central Excise Act providing for penalty of 25% of duty demanded, if duty is paid within 30 days of the order. In the present case, the respondent No. 1 deposited the duty before the issue of show cause notice and the penalty is warranted to ~~but~~ 25% of duty i.e. Rs.78,000/-.

5. Regarding the imposition of penalty on the respondent No. 2, the director of the company, the adjudicating authority observed that Shri Chetan Bhatia, being the director of the company was responsible for day today working of the firm and he had consciously indulged in evasion of duty. He also observed that respondent No. 2 was aware that goods were removed without payment of duty. On perusal of the statement of the respondent No. 2, it appears that respondent No. 2 had knowledge of the

removal of goods and therefore, I agree with the observation of the adjudicating authority. However, the penalty on the respondent No. 2 is excessive and accordingly, the penalty is reduced to Rs.20,000/- (Rupees twenty thousands only).

6. In view of the above, order of Commissioner (Appeals) is set aside. Adjudication order is modified in as far as penalties on Respondents No. 1 and 2 are reduced to Rs.78,000.00 (Rupees Seventyeight thousand only) and Rs. 20,000.00 (Rupees Twenty thousand only) respectively.

(Pronounced in the open Court)

(P.K.Das)
Member(Judicial)

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