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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/2137/2006- SM[BR] Date 05/09/2008

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

To :
CCE,JAIPUR-I
NCRB STATUE CIRCLE,C SCHEME JAIPUR

CCE,JAIPUR-I Appellant
Vs
M/S GARG ISPAT UDYOG LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1295 / 2008 –SM[BR] dated 14.8.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S GARG ISPAT UDYOG LTD.
   PLOT NOG459-461,PHASE-I,RIICO INDL AREA,BHIWADI,DISTT ALWAR,(RAJ)
2. Adv. / Consult SHRI V.R. SETHI ADV.
   N / V ;------------------
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 NEW DELHI

Excise Appeal No.2137 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.52(MPM)CE/JPR-I/2006 dated 7.3.2006 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:14.08.2008

For approval and signature:

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

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? : Yes

CCE, Jaipur ....Appellants
[Rep. by Shri A.K. Rastogi, DR]

Vs.

M/s. Garg Ispat Udyog Ltd. ...Respondent
[Rep. by Shri V.R. Sethi, Advocate]

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

Final Order No..1295/08.../Dated:14.08.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Respondents are engaged in the manufacture of M.S. Pipes classifiable under Chapter 73 of the Schedule to the Central Excise Tariff Act, 1985. On 8.12.2001, the

Central Excise Officers visited the Respondent's factory and conducted stock verification. The said officers found shortage of stocks of inputs. The Respondents admitted the shortage and deposited the duty on 8.12.2001. The Adjudicating Authority confirmed the demand of duty of Rs.87,267/- and appropriated the said amount as deposited by them and also imposed a penalty of equal amount under Section 11 AC of the Central Excise Act, 1944. The Commissioner (Appeals) set aside the penalty. Hence, the Revenue filed this appeal.

2. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the Respondent failed to explain the reasons for shortage and, therefore, it is presumed that inputs were clandestinely removed. So, the Adjudicating Authority rightly imposed penalty of equal amount.

3. Ld. Advocate on behalf of the Respondent reiterates the findings of the Commissioner (Appeals). He relied upon the decision of the Hon'ble High Court in the case of Commissioner of Central Excise, Ludhiana Vs. Omkar Steel Tubes (P) Ltd. – 2008 (221) ELT 200 (P&H) and Commissioner of Central Excise Vs. Electrolus Kelvinator Ltd. reported in 2008 (11) STR 216 (P&H).

4. After hearing both the sides and on perusal of the records, it is seen that on 8.12.2001,the Central Excise Officers detected the shortage during stock verification. The Respondent admitted the shortage and deposited the duty on the spot. There is no material of fraud, wilful suppression of facts or mis-statement of facts, etc. on the part of the Respondent. The

Hon'ble Punjab & Haryana High Court in the case of Omkar Steel Tubes (P) Ltd. (supra) held that the allegation of mens rea has to be present. It has been held that there must be a finding to be recorded regarding mens rea or any intention on the part of the assessee that the goods were removed with the intention to evade payment of duty.

5. In the present case, no materials were produced that the Respondent removed the goods clandestinely. I also note that the show cause notice was issued after 3 years of payment of duty. I agree with the findings of the Commissioner (Appeals) that the show cause notice issued after 3 years of the visit by the officers to the factory without giving any reason for not issuing show cause notice upon detection of the alleged clandestine removal of the goods. In view of that, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 14.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.