TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/274 /2007 – SM[BR] Date 11/11/2008

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

To :
M/S SUN POLYTEX PVT LTD
E-272-273, BHAMASHAH INDUSTRIAL AREA,
KALADWAS-UDAIPUR(RAJ)

M/S SUN POLYTEX PVT LTD Appellant
Vs
C.C.E.JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1433 / 2008 – SM[BR]** dated 11.9.2008 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.JAIPUR II
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR.
2. Adv. / Consult
   MR.R.L.MEHTA,CONSULTANT
   180-SECTOR 3, HIRAN MAGRI,UDAIPUR
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 - 3
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
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-1
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

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

COURT-IV

Date of hearing: 11.9.2008

E/Appeal No. 274/2007-SM(BR)

(Arising out of Order-in-Appeal No. 504 (HKS) CE/JPR-II/2006 dated 12.9.2006 passed by the Commissioner (Appeals) Customs & Central Excise, Jaipur).

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?

NO.

4. Whether Order is to be circulated to the Departmental authorities? yes.

M/s Sun Polytex Pvt. Ltd. — Appellant/Applicant
(None for the Appellant)

Vs.

CCE, Jaipur — Respondent
(Rep. by Shri A.K. Rastogi, DR for the Respondent)

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

Final Order No. 1433/08-SM(BR)

Per: P.K. Das

None appeared on behalf of the Appellant. By letter dated 11.8.08 the Appellant requested to decide the appeal on merit in there absence.

2. Heard the ld. DR and perused the records.

3. The relevant facts in this case in brief are that the Appellant are engaged in the manufacturer of PP tape, fabric and sacks, under chapter 39 of the Schedule to the Central Excise Tariff Act, 1985. On 13-14 March, 2001 the Central Excise Officers visited the Appellant's factory and conducted the stock verification. The said officers ascertained shortage of finished goods and inputs..

4. The representative of the Appellant in his statement admitted the shortage. The Appellant deposited the amount of duty of Rs. 4761.00 on 17.4.2001. A show cause notice was issued on 23.10.2002 proposing demand of duty and to impose penalty under Rule 173Q of the erstwhile Central Excise Rules, 1944 read with Rule 25 of the Central Excise Rules 2001. The Adjudicating Authority by Order dated

26.3.2003 confirmed the demand of duty of Rs.1,53,179.00 alongwith interest and appropriated the amount of Rs.4,671.00 as deposited by them and also imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944. After receipt of Adjudication Order, the appellant deposited the balance amount of duty and interest on 17.4.03 and 24.4.2003 respectively. Revenue filed and appeal before the Commissioner (Appeals) for imposition of penalty under Rule 173Q of Central Excise Rules 1944 and Appellant filed appeal against Adjudicating Order.

5. Commissioner (Appeals) by Order dated 12.9.2006 upheld the demand of duty and accepted the Revenue appeal to deem the penalty imposed under Section 11 AC as penalty imposed 173Q of the Central Excise Rules 1944 and interest would be also recoverable. After receipt of Order of Commissioner (Appeals), the appellant deposited penalty 25% of duty on 27.9.2006 as per provision of Section 11 AC of the Act.

6. It is seen from the Order of the Commissioner (Appeals) that shortage of goods and removal thereof without issue of invoices are an admitted fact. Show Cause Notice proposed imposition of penalty under Rule 173Q of erstwhile Rules. Adjudicating Authority imposed penalty of equal amount of duty under Section 11 AC of the Act.

Revenue filed appeal for imposition of penalty under Rule 173Q of the erstwhile Rules. Commissioner (Appeals) held that the penalty imposed under Section 11 AC of the Act deemed to be under Rule 173Q of the Rule. There main contention of the Appellant that section 11 AC was not invoked in the Show Cause Notice and, therefore, penalty is liable to be set-aside. I find that it is an undisputed fact that the Appellant removed the goods without payment of duty. So, penalty is warranted. So, the issue is whether the Adjudicating Authority imposed penalty of equal amount under Section 11 AC instead of Rule 173 Q is justified. In any event, I have already observed that penalty is imposable for clearance of goods without payment of duty. The Hon'ble Delhi High Court in the case of Commissioner of Central Excise Vs. Malbro Appliances P. Ltd. reported in 2007 (208) ELT 503 (Del.) held that first proviso to Section 11 AC of the Central Excise Act, 1944 providing for penalty of 25% of duty demanded paid within 30 days of the order. In the present case the Appellant paid the duty within 30 days of receipt of Order. They also deposited interest. So, penalty under Rule 173Q of the erstwhile Rules or Section 11 AC of the Act cannot be more then 25% of duty, In view of that the impugned order is modified and penalty is reduced to 25% of duty. The appeal is disposed of in the above terms.

(Dictated and pronounced in the open court).

(P.K. Das)
Member (Judicial)

K. Gupta

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AI
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

(Principal Bench)

West Block No.2, R.K. Puram, New Delhi-110066

SINGLE MEMBER APPEAL BRANCH

Date : 11/12/2009

MISC Order No. 251 / 2009 -SM[BR]
Application E / ROM / 28 / 2009 -SM[BR] IN
Appeal E/274/2007 - SM[BR]

1. Appellant
   M/S SUN POLYTEX PVT LTD
   E-272-273, BHAMASHAH INDUSTRIAL AREA, KALADWAS-UDAIPUR(RAJ)
2. Respondent
   C.C.E.JAIPUR II
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR.
3. Adv / Consult :
   NONE;--------------

4. C.D.R
5. Bar Association, CESTAT, New Delhi.
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi - 110003
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2 (OLD No.36),Vaithyaram Street, T. Nagar, Chennai 600017
9. Raghuraman's, 44 - B, Regal Flat,Shipra Suncity,Indirapuram,201010,Ghaziabad DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases, B-37, Sector -1, Noida - 201301 Gautam Budh Nagar, (U P)
11. Deeparchie Publications, M-93, Marg. 43, Saket, New Delhi - 110017.
12. Taxindiaonline.com Pvt.Ltd,B-XI/8183,Vasant Kunj,New Delhi -110070
13. Taxmann Allied Service Pvt. Ltd., 21/35, West Punjabi Bagh, New Delhi -110026
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard File

Assistant Registrar
(SM Branch)

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

Excise Rectification of Mistake Application No. 28/09-SM
Excise Appeal No. 274 of 2007-SM(BR)

[Arising out of Tribunals Final Order No. 1433/08-SM(BR) dated 11.09.2008 passed by Customs, Excise & Service Tax Appellate Tribunal, New Delhi]

M/s. Sun Polytex Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise Jaipur — Respondent

Appearance:

None for the Appellants
Shri S.K. Bhaskar, DR for the Respondent

Date of Hearing/decision : 4.12.2009

ORAL ORDER NO. 251/2009 SM(BR)

Per M. Veeraiyan:

This application is for rectification of alleged mistake in the Final order of the Tribunal No. 1433/08 SM(BR) dated 11.9.08. The applicant has stated that application may be decided on merits.

2. The main grounds for seeking modification of mistake is as follows:

a) The main plea of the appellant in the subject appeal was that no penalty was imposable under Erstwhile Rule 173 Q of the Central Excise Rules, 1944 as it was not in force neither at the time of passing the order nor at the time of issue of show cause notice dated 23.10.02. The Rule 173Q had already been superseded vide notification No. 9/2001 dated 01.03.01.

M. Veeraiyan

Therefore no penalty can be imposed under the omitted Rule. The Hon'ble CESTAT while passing the impugned order instead of considering the above plea of the appellant reduced the penalty equal to 25% of the duty involved. Therefore, as per humble submission it is a mistake apparent from the record and is required to be rectified.

b) Against the above order of the Commissioner (Appeals) the applicant filed appeal before Hon'ble CESTAT interalia protesting the imposition of penalty under erstwhile Rule 173Q as the said rule was not in force at the time of passing the order and not even at the time of issue of show cause notice. The Hon'ble Tribunal without considering the plea of the appellant reduced the penalty equal to 25% of the duty demanded. Hence the instant ROM application.

c) The applicant pleaded that neither show cause notice nor order of the Commissioner (Appeals) specified as to which particular clause of Rule 173Q has been contravened by the appellant. Rule 173Q (erstwhile) contained six clauses, the contents of which are not the same. It was therefore necessary for the assessee to be put on notice as to the exact nature of the contravention for which the assessee was liable under the provisions of Rule 173Q.

3. It is to be noticed that the applicant was not represented on 11.9.08 when the matter was heard by the Tribunal. There was letter dated 11.8.08 requesting to decide the appeal on merits in their absence. The appeal has been decided based on records and submissions of the learned DR. The detailed reasoning has been recorded on the submissions raised in the

grounds of appeal. The grounds raised in the application are not significantly different from those in the grounds of appeal which had already been dealt with in the order of the Tribunal dated 11.9.08. The order of the Tribunal is an appealable one. The prayer in the application is for recalling the order passed by the Tribunal earlier and deciding the appeal afresh. Acceptance of this prayer will amount to review of order of the Tribunal which is not permissible in the garb of Rectification of Mistake.

4. In view of the above, I do not find any merits in the application. The application is therefore, rejected.

M. Veeraiyan

(M. Veeraiyan)
Member(Technical)

ss