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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/159 /2007 – SM[BR] Date 11/11/2008

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

To :
M/S CHANDA ENTERPRISES PVT LTD
PLOT NO 322-323, SECTOR 58, FARIDABAD.

M/S CHANDA ENTERPRISES PVT LTD Appellant
Vs
C.C.E.FARIDABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1435 / 2008 – SM[BR]** dated **18.9.2008**

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.FARIDABAD
   C.G.O COMPLEX, NH-IV, FARIDABAD.
2. Adv. / Consult SHRI, RAMESH KUMAR CONSLTT.
   B – 222, SIS RAM COMPLEX , MAIN MARKET
   BADARPUR NEW DELHI -44

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.E/159/2007-SM (BR)

[Arising out of Order-in-Appeal No.89/CE/Appl/DLH-IV/2006 dated 8.11.2006 passed by the Commissioner of Central Excise (Appeals), Faridabad]

Date of Hearing/ Decision:18.09.08

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?	:	M
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.

M/s. Chanda Enterprises (P) Ltd. . ...Appellants
[Rep. by Shri Ramesh Kumar, Consultant]

Vs.

CCE, Faridabad ...Respondent
[Rep. by Shri S. Gautam, DR]

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

Final Order No.14.3.5/08-SM(BR)/Dated:18.09.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellants are engaged in the manufacture of Motor Vehicle parts. On 9.6.2004, the Central Excise Officers visited the Appellant's Factory and conducted stock verification. The said officers ascertained shortage of coper circle involving central excise duty of Rs.1,68,257/-. Shri Sanjay Chanda, Director of the Appellant Company in his statement dated 9.6.2004 accepted the shortage and debited the amount of duty on the shortage on the same day. The Adjudicating Authority confirmed the demand of duty and appropriated the said amount as deposited by them. He also imposed penalty of Rs.10,000/- under Rule 25 of the Central Excise Rules, 2002. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Counsel on behalf of the Appellant submits that the Appellant received the goods for job work and no credit was availed on the said materials and, therefore, the demand of duty is not sustainable. He further submits that it is well settled law that duty cannot be demanded on the job work material. He further submits that they were manufacturing the auto parts and undertaking the job work. The shortage of materials relates to job work materials where not credit was availed. Ld. Advocate submits that the duty was debited under coercion of the Central Excise Officers.

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that in this case, the Appellant debited the duty voluntarily after admitting the mistake. He further submits that it is revealed from the statement that the Appellant accepted the shortage and paid the duty voluntarily and no refund was claimed. He also submits that there is no evidence that the duty was paid under coercion

4. After hearing both the sides and on perusal of the records, it is revealed from the show cause notice that Shri Birender Kumar Sharma in his statement dated 7.12.2004 stated that it was difficult to correlate the

shortage of the goods and so, they admitted their mistake for the shortage found on 9.6.2004 and they have already debited the duty amount of Rs.1,61,257/- and also stated no further explanation was possible on account of circumstances stated by them. He also stated that the shortage was on account of non-availability of concerned staff and they have no intention to evade payment of duty. I find that the shortage was detected on 9.6.2004 and several statements were record, and in the statement dated 29.11.2004, they have taken the stand of job work materials as contended by the ld. Counsel. So, I do not find any force in the submission of the ld. Counsel. It is noted that the Appellant voluntarily deposited the duty, which was appropriated by the Revenue in the impugned order. I agree with the submission of the ld. DR that the Appellant failed to produce any evidence that the duty was paid under coercion or under protest. So, the duty was rightly appropriated. However, I do not find any reason for imposition of penalty. There is no evidence of clandestine removal of the goods and, therefore, penalty is not justified. Accordingly, the impugned order is modified. The demand of duty is upheld and penalty is set aside.

Order dictated & pronounced in open court on 18.09.2008.

(P.K. Das)
Member (Judicial)

Ckp.