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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/3183/2006-3184/2006 – SM[BR] Date 11/11/2008

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

To :
C.C.E.JAIPUR I
NCRB,STATUE CIRCLE,C-SCHEME,JAIPUR.

C.C.E.JAIPUR I Appellant
Vs
M/S WOLKEM INDIA LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1438-1439 /2008 –SM[BR]** dated 10.9.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

1. M/S WOLKEM INDIA LTD
2. M/S SECURE METALS LTD.

UDAIPUR(RAJ)

2. Adv. / Consult

NONE

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, COURT NO. III

Excise Appeal No. 3183-3184 of 2006-SM(BR)

[Arising out of Order-in-Appeal No. 382-383(HKS)CE/JPR-II/2006 dated 29.6.2006 passed by Commissioner (Appeals II) Customs & Central Excise, Jaipur.]

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. Jaipur II — Appellant

Vs.

M/s. Wolkem India Ltd.
M/s. Secure Metals Ltd. — Respondent

Appearance: Mr. K.K. Goyal, Jt.CDR for the Appellant
None for the Respondent

Date of decision : 10.9.2008

Final **ORDER NO.** 1438-1439/08-SM(PR)

Per P.K.Das:

Both the appeals are arising out of common order and therefore, both are being taken up for disposal. None appeared on behalf of the respondent No. 1 despite of issue of notice. Company Secretary of respondent No. 2 requested for adjournment as he is out of town and is not in a position to argue this matter. I find that the ground of adjournment is not satisfactory and therefore the request for adjournment is rejected.

2. After hearing the learned DR and on perusal of the records, it is seen that the respondents exported their final products from their factory as per permission given by the Assistant / Deputy Commissioner of Custom. It is permitted to export the goods at the factory premises under supervision of the Central Excise Officer on MOT basis. It has been alleged that they failed to discharge MOT charges. The adjudicating authority confirmed the demand in respect of MOT short paid under Regulation 3 of Customs (Fees for rendering services by the Customs Officers) Regulation, 1998. He also imposed penalties under section 158 (2) (ii) (b) of Customs Act, 1962 for contravention of Regulation 3 of the said Regulation, 1998. The respondents filed appeal before the Commissioner (Appeals) whereby the adjudication orders were set aside. Hence the Revenue filed these appeals.

3. The learned Jt. CDR submits that no appeal lies against the order for recovery of supervision charges before the Commissioner (Appeals). He relied upon the decision of Hon'ble Rajasthan High Court in Shree Pipes Ltd. vs. UOI [1995 (79) ELT 405 (Raj)] which has been followed by the Tribunal in the case of D P Exports vs. Commissioner of Central Excise, NOIDA [2005 (188) ELT 503 (Tri-Del).

4. I find force in the submissions of the learned Jt. CDR. The Hon'ble Rajasthan High Court in the case of Shree Pipes (supra) held that appeal does not lie against the order rejecting claim for refund of ~~suppression~~ supervision charges under section 128 of Customs Act, 1962. Tribunal in the case of D P. Export (supra) following the decision of Rajasthan High Court held as under:

> "3. I have considered the submissions made by both the sides. I find that the Rajasthan High Court in Shree Pipes Ltd. v. Union of India (supra) has clearly held that only such order which may be passed under the Customs Act, is appealable under Section 128 of the Customs Act. In the present case, the issue relates to the recovery of establishments / supervision charges which were recovered in terms of the condition of the bond. Therefore, such order cannot be appealable before the Commissioner (Appeals) or the Tribunal. In these circumstances, the imposition of penalty under Section 117 of the Customs Act is not justifiable as for administrative act the penalty cannot be imposed under Section 117 of the Customs Act. Therefore, the order of the Commissioner (Appeals) is modified to the extent that the appeal is not maintainable as far as the recovery of supervision charges is concerned but imposition of penalty by the original authority under Section 117 of the Customs Act, is set aside."

5. In view of the above decisions, the order of the Commissioner (Appeals) is set aside as not maintainable against the recovery of MOT charges. Adjudication rder is ~~returned~~ restored and modified to the extent imposition of penalty is set aside. The respondents are at liberty to avail the remedies against the recovery of MOT charges in accordance with law before the appropriate authority

(Pronounced in the open Court)

(P.K.Das)
Member(Judicial)

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