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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/3847/2006-SM[BR]

Date 22/05/2008

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

To :
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C.E.CHANDIGARH — Appellant

Vs

M/S MOHAN INDUSTRIES — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 799 /2008 –SM[BR]** dated **8.4.2008**

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 MOHAN INDUSTRIES
   C-8, FOCAL POINT, RAJPURA(PB)
2. Adv. / Consult SHRI J.P. KAUSHIK ADV.
   A- 14/3, SFS FLATS, SAKET NEW DELHI-110017
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Dee[redacted]3, 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. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No. 3847/06-SM

(Arising out of order in appeal No.821/CE/chd/06 dated 6.9.06 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

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

No

CCE Chandigarh — Appellant
(Rep. by Shri A.K. Rastogi, DR)

Vs

M/s Mohan Industries — Respondent
(Rep. by Shri J.P. Kaushik, Advocate)

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

Date of Hearing: 8.4.08

Final Order No. 799 /2008-SM(BR)

Per P.K. Das:

The Revenue filed this appeal against the order of the Commissioner (Appeals) whereby penalty of Rs.13,874/- imposed under Section 11AC of the Central Excise Act, 1944 was set aside.

2. After hearing both the sides and on perusal of the record, I find that the Central Excise officers detected the shortage of inputs during stock verification and the respondents reversed credit of Rs. 13,874/- on the same date. The Adjudicating Authority confirmed the demand of duty and appropriated the amount as deposited by the respondents and also imposed penalty of equal amount under Section 11AC of the Act. The Commissioner (Appeals) set aside the penalty on the ground that the respondents deposited the duty before issue of show cause notice, following the decision of the Larger Bench in the case of Machino Montell (P) Ltd reported in 2006 (62) RLT 709 . The Hon'ble Punjab & Haryana High Court in the case of CCE Ludhiana Vs Sigma Steel Tubes reported in 2007 (82) RLT 361 has held, the relevant portion is reproduced below:-

> 6. We have thoughtfully considered the submission made by the learned counsel and have also perused the order in original, order in appeal and the order passed by the Tribunal. We do not feel persuaded to accept the contention raised because firstly the Commissioner (Appeals) in his order dated
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> 363
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> 23.2.2006 (P-2) has recorded a finding that it was not a case of clandestine removal of items. It also referred to a judgment of Hon'ble the Supreme Court in the case of *Rashtriya Ispat Nigam Ltd. v. Commissioner, 2004 (163) E.L.T. A53*. The view of the Commissioner (Appeals) reads as under:-
>
> "I have carefully examined the case records including the Appellants submissions made in writing and at the time of personal hearing and observe that the Appellant have already paid duty before issue of Show Cause Notice, no interest and penalty is imposable as held by Tribunal in the case of Rashtriya Ispat Nigam Ltd., Vs CCE 2003 (161) ELT 265 (Tri) and upheld by Supreme Court reported as 2004 (163) ELT A.53. The Larger Bench of CESTAT has also followed the said decision in the case of CCE Vs Machino Montell (P) Ltd., 2004 (62) RLT - 709. Moreover no Show Cause Notice is required under section 11A (2B) in as much as the shortage of the finished goods may be due to wrong 3 C.E.A. No. 26 of 2007 accounts and clerical mistakes also and it cannot be a case of clandestine removal unless proved by the corroborative evidences. Order-in-Original imposing the interest and penalty is, therefore, set aside and amount of duty deposited is confirmed. Moreover, when penalty is imposed on the company no penalty is imposable on the Partner."
>
> 7. We are further of the view that Hon'ble the Supreme Court in the case of *Rashtriya Ispat Nigam Ltd.* (supra) has dismissed the appeal of the revenue by upholding the order of the Appellate Tribunal accepting the proposition that no penalty was imposable under Section 11AC of the Act as well as under Rule 173Q of the erstwhile Central Excise Rules, 1944, once the duty is deposited before issuance of show cause notice. On the basis of the aforementioned findings as well as clear position of law, we are of the view that no substantive question of law warranting admission of these appeals would arise.

3. In any event, I find there is no material for clandestine removal of goods. The respodents explained the reason for shortage. Therefore, penalty under Section 11AC of the Act is not justified. I do not find any reason to interfere with the order of the Commissioner (Appeals). Appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*