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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/1647/2006-SM[BR] Date 23/05/2008

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

To :
CCE,INDORE
P.B.NO-10,MANIK BAGH PALACE,INDORE(MP)

CCE,INDORE Appellant
Vs
M/S NATIONAL METAL IND Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 809 /2008 –SM[BR] dated 4.4.2008 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 NATIONAL METAL IND
   314,BHAGIRATHPURA INDORE,
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 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.1647/2006-SM

(Arising out of order in appeal No. Ind.I/79/2006 dated 21.2.2006 passed by the Commissioner of Central Excise (Appeals), Indore)

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, Indore — Appellant
(Rep. by Shri B.S. Suhag, DR)

Vs

M/s National Metal Industries — Respondent
(Rep. by none)

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

Date of Hearing: 4.4.2008

Final Order No. 809 /2008-SM(BR)

Per P.K. Das:

Heard the learned DR on behalf of the Revenue. None appeared on behalf of the respondent inspite of issue of notice.

2. The Revenue filed this appeal against the order of the Commissioner (Appeals) whereby penalty was set aside. The relevant facts of the case as per the impugned order, is reproduced below:-

"From the facts available on record, it is clear that the appellants did not pay the duty for the months of February and March, 2000 by the due date (10th of the following month) but the same was paid in September, 2000 and for this reason a notice has been issued in October, 2005 for imposition of penalty. Further as rightly pointed by the Appellants, the department took action to recover certain amounts from the Appellants which included the penalty amount of rs. 7,20,224/- by way of an Attachment Order in 2001 but such order was set side vide order in appeal No. 592/2003 dated 7.11.2003. In the said order in appeal, it was specifically mentioned that for imposition of penalty for delayed payment of duty, necessary show cause notice has to be sued before confirming the same. The Department appeal against this order has been rejected by the Tribunal vide their order No. 697/2004-B dated 18.82004. In view of this position, it is clear that the show cause notice issued in October, 2005 would be clearly a belated one and hence the action of imposing penalty equivalent to duty amount not paid in time in the year 2000 cannot be sustained. The case law cited by the appellants namely, A.R. Alloys Vs CCE is squarely applicable to this case and also accordingly, I have no hesitation in holding that the penalty imposed on the appellants vide the impugned order is not sustainable and therefore, the same is set aside."

3. The learned DR submits that there is no limitation for imposition of penalty, I find that in this case, the payment of duty relates to the month of

February-March, 2000 which was paid by the respondents in September, 2000. Revenue collected the amount as penalty by way of attachment order in 2001 which was set aside by the Tribunal vide Final Order dated 18th August, 2004. On the same issue, the show cause notice proposed to impose penalty in 2005 is not sustainable.

4. In view of the above, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judl)