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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/1142/2006-SM[BR] = E/1143/2006-SM(BR) Date 25/06/2008

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

To :
CCE,JALANDHAR
CE DIVISION-I,JALANDHAR
CCE,JALANDHAR Appellant
Vs
M/S JAI UDYOG TRADING CORP Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 994 -995 /2008 –SM[BR] dated 4.3.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
(1-2) M/S JAI UDYOG TRADING CORP
M-2/1,INDL AREA,JALANDHAR
2. Adv. / Consult SHRI K.K.SHARMA ADV.
A-5,[BASEMENT] LAJPAT NAGAR-III
NEW DELHI 110024
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 Nos.1142-1143 /2006-SM

(Arising out of order in appeal No.151-153/CE/Jal/05 dated 28.4.05 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 Jalandhar — Appellant (Rep. by Shri S. Gautam, DR)

Vs

M/s Jai Udyog Trading — Respondent (Rep. by Shri K.K. Sharma, Advocate)

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

Date of Hearing: 4 .3.2008

Final Order No. 994-995/2008-SM(BR)

Per P.K. Das:

The Revenue filed these appeals against the order of the Commissioner (Appeals) whereby penalty was reduced from Rs. 1,37,560/- to Rs.25,000/-.

2. The relevant facts of the case as per records, in brief, are that on 20.10.2001, the Central Excise officers visited the respondents factory. It was found that the respondents were engaged in the manufacture of Valves and Cocks classifiable under sub-heading 8481.80 bearing the brand name "KIRTI" belong to some other person, without obtaining Central Excise registration. The Central Excise officers detected records of the clearance of the said goods and seized branded goods. By adjudication order dated 22nd June, 2004, the adjudicating authority imposed penalty of Rs.10,000/- each on the respondent firm and its partner and imposed imposed redemption fine of Rs.9,500/- on the respondent on confiscation of seized goods. By adjudication order dated 18th June, 2004, the adjudicating authority confirmed the demand of duty of Rs. 1,37,560/- and imposed penalty of equal amount on the respondent. The Commissioner (Appeals) decided the appeals against both adjudication orders by the impugned order. Commissioner (Appeals) set aside the penalty on the partner of the respondent firm against adjudication order dated 22nd June, 2004. With regard to adjudication order dated 18th June, 2004, the Commissioner (Appeals) modified the demand of duty of Rs.1,18,586/- with interest and reduced the penalty to Rs.25,000/-. Revenue filed these appeals for imposition of penalty of equal amount of duty under Section 11AC of the Central Excise Act, 1944.

3. The learned DR reiterates the grounds of appeals. He submits that the respondents suppressed the facts with intent to evade payment of duty and therefore, the adjudicating authority rightly imposed penalty of equal

amount of duty. The learned Advocate on behalf of the respondents reiterates the findings of the Commissioner (Appeals).

4. After hearing both the sides and on perusal of record, it is seen from the order of the Commissioner (Appeals) that the appellants were using brand name 'KIRTI' on valves and cocks manufactured by them. It is contended that the other person M/s Jupiter Metal Industries were issuing the brand name 'KIRTI' on pipe fittings. Thus, there was no connection in the course of trade between M/s Jupiter Metal Industries and the appellants. The Commissioner (Appeals) observed that the controversy regarding the use of brand name on similar or different brand name was settled by the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Trichy Vs Rukmani Packwell Traders reported in 2004 (165) ELT 481 (SC) in favour of the Revenue. It is seen that there was dispute of liability of duty on the appellants goods and imposition of penalty under Section 11AC of the Act is not justified.

5. In view of the above discussion, I find that the Commissioner (Appeals) had reduced the penalty after considering the facts and law of the case and also had given proper reasons thereof. So, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeals filed by the Revenue are rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*

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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

Date : 17/11/2008

MISC Order No. 316 / 2008 -SM[BR]

Application E/ROM/47/2008 - SM In

Appeal E/1142 – 1143 / 2007-SM[BR]

1. Appellant
   CCE,JALANDHAR
   CE DIVISION-I,JALANDHAR
2. Respondent
   M/S JAI UDYOG TRADING CORP
   M-2/1,INDL AREA,JALANDHAR
3. Adv / Consult : SHRI SUDHIR MALHOTRA ADV.
   13-R, HUKAM CHAND COLONY NEAR D.A.V.COLLEGE JALANDHAR
4. C.D.R
5. Bar Association, CESTAT, New Delhi.
6. M/s. Deeparchi Publications, M-93, Marg. 43, Saket, New Delhi.
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, Opp. Sachdeva P.T. College of Defence Colony, New Delhi - 110003
8. Excise & Customs cases, B-37, Sector -1, Noida - 201301 (U P)
9. R.Venkatraman, Constt. 44B, S. Suncity,Ghaziabad - 201010, U.P.
10. Director Publications, Customs, Excise. I.P. Estate, New Delhi
11. Taxmann Allied Service Pvt. Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026.
12. Co. Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 70
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard File

Assistant Registrar
(SM Branch)

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

Excise ROM Application No.47 of 2008-SM (BR) in
In Appeal No.1142-1143 of 2007-SM (BR)

CCE, Jalandhar ...Appellants
[Rep. by Shri R.K. Saini, DR]

Vs.

M/s. Jai Udyog Trading Corpn. ...Respondent
[Rep. by None.]

Date of Hearing:21.10.2008
Date of Decision:21.10.2008

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

Misc Order No. 316/08-SM(BR) /Dated:21.10.2008

Per P.K. Das:

Revenue filed this application for rectification of mistake in Final Order No.994-995/2008-SM (BR) dated 4.3.2008.

2. Ld. DR on behalf of the Revenue submits that on the identical issue, the Tribunal vide Final Order No.1112/2007-SM (BR) dated 20.07.2007 in the case of same respondent allowed the appeal filed by the Revenue. He submits that the Tribunal in the subsequent Final Order dated 4.3.2008 have taken a contrary view. He reiterates the contents of ROM Application. The relevant portion of the application is reproduced below:-

> "From the above facts, there appears to be an apparent mistake in passing second Final Order NOs.994-995/2008-SM

(BR) dated 4.3.2008, again, as the Hon'ble CESTAT cannot pass two self-contradictory orders on the same issue on same set of appeals filed by the department. The Hon'ble CESTAT can also not review its own order until there are any directions from the Hon'ble High Court or Supreme Court. The second order dated 4.3.2008 is a nullity in the eyes of the law and therefore needs to be recalled and modified."

3. After hearing both the sides and on perusal of the records, I find that the main contention of the Revenue is that the Final Order dated 4.3.2008 is nullity in the eye of law. On perusal of the records, I find that the Final Order dated 20.07.2007 is an ex parte order. It is seen that the decision vide Final Order dated 20.07.2007 was not brought to the notice of the Tribunal while passing Final Order dated 4.3.2008, it cannot be a mistake apparent on face of record. In any event, the contention of the Revenue that the Final Order dated 4.3.2008 is a nullity in the eye of law, which cannot come within the purview of Section 35 C(2) of Central Excise Act, 1944. Accordingly, the ROM application is rejected.

Order dictated & pronounced in open court on 21.10.2008.

(P.K. Das)
Member (Judicial)

Ckp.