(17)

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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/2556/2006&,2600/2006-SM[BR] Date 25/06/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
M/S MALWA COTTON SPINNING MILLS LTD
RAJKOT ROAD, BARNALA, DISTT.- SANGRUR
(PUNJAB)

[2] C.C.E, LUDHIANA
V/S
M/S MALWA COTTON SPG. MILLS LTD.
RAJKOT ROAD, BARNALA DISTT-SANGRUR[P.B.]

M/S MALWA COTTON SPINNING MILLS LTD Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 996 -997 /2008 –SM[BR] dated 3.6.2008

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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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)

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

PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.2556&2600 of 2006 –SM (BR)

[Arising out of Order-in-Appeal No.393/CE/CHD/06 dated 28.04.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:3.6.2008

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? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

NA

Appeal No.E/2556/06-SM (BR)

M/s. Malwa Cotton Spg. Mills Ltd. & Ors. ...Appellants
[Rep. by Shri H. Bajaj, Advocate]

Vs.

CCE, Chandigarh ....Respondents
[Rep. by Shri S.L. Meena, DR]

Appeal No.2600 of 2006-SM (BR)

CCE, Ludhiana ......Appellant

Vs.

M/s. Malwa Cotton Spg. Mills Ltd. & Ors. ...Respondent

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

Final Order No. 996-997/08/Dated:3.6.2008

Per P.K. Das:

Common issue involved in both the appeals and, therefore, they are taken up together for disposal.

2. The relevant facts of the case, in brief as per records, are that by Final Assessment Order dated 1.11.2004, the assessee was entitled to refund of Rs.2,94,085/-. In terms of the Assessment Order, the assessee availed Credit of Rs.2,94,085/- on 27.11.2004. During the course of audit, it was pointed out that the assessee took the credit suo moto. Accordingly, on 26.9.2005, the assessee debited the amount in the RG-23 A Part-II Account. A show cause notice dated 1.11.2005 was issued proposing to demand the said amount and to impose penalty. In the meantime, the assessee filed the refund claim of the amount. By Adjudication Order dated 4.1.2006, the Asstt. Commissioner of Central Excise allowed the Cenvat Credit of the said amount in their RG-23A Part-II. Thereafter by Adjudication Order dated 27.1.2006, the same Asstt. Commissioner confirmed the demand of duty in the show cause notice dated 1.11.22005 and appropriated the amount as debited by the assessee. He also imposed a penalty of equal amount under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise

Act, 1944. The Commissioner (Appeals) modified the Adjudication Order to the extent that penalty was reduced to Rs.25,000/-. The assessee filed appeal before this Tribunal for setting aside the penalty as well as Revenue filed appeal for enhancement of the penalty.

3. The ld. Advocate on behalf of the assessee submits that the same Asstt. Commissioner allowed the refund claim before passing the Adjudication Order. He further submits that there is no suppression of facts with intent to evade payment of duty and imposition of penalty under Section 11 AC of the Act cannot be sustained. He also submits that the assessee debited the duty before issue of show cause notice and penalty cannot be imposed as held by the Hon'ble High Court of Punjab & Haryana as under:-

(a) Commissioner of Central Excise, Ludhiana
Vs. Omkar Steel Tubes (P) Ltd.
2008 (221) ELT 200 (P&H)

(b) Commissioner of Central Excise, Rohtak
Vs. S.B. Packaging Ltd.
2008 (223) ELT 360 (P&H)

4. Ld. DR on behalf of the Revenue submits that the assessee availed the Credit suo moto, which is not permissible under the law and he submits that the assessee knowingly committed the irregularities and, therefore, penalty under Section 11 AC of the Act is justified.

5. After hearing both the sides and on perusal of the records, I find that by Assessment Order dated 1.11.2004, the assessee was entitled to

avail the refund of the Credit. The assessee themselves debited the Credit when pointed out by the Audit. It is seen that before passing the Adjudication Order, the same Asstt. Commissioner allowed the refund of Rs.2,94,085/- in their RG-23A Part-II Account. So, there is no fraud, willful mis-statement, collusion or suppression of facts with intent to evade payment of duty and sub-rule (2) of Rule 15 of the said Rules read with Section 11 AC of the Act is not applicable herein.

6. In view of the above discussion, I find that in facts and circumstances of the case, imposition of penalty under Rule 15 read with Section 11 AC of the Act is not warranted. Accordingly, the penalty is set aside. The appeal filed by the Revenue is rejected. The appeal filed by the assessee is allowed.

Order dictated & pronounced in open court on 3.6.2008.

(P.K. Das)
Member (Judicial)

Ckp.