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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/3346/2006-3347/2006-SM[BR] Date 23/07/2008

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

1. M/S SHRESHILD INTERIORS PVT LTD.
2. SHRI DEVINDER SONI
D-149-155 AND 178 TO 182, PHASE-II, EXTENSION,
NOIDA.

M/S SHRESHILD INTERIORS PVT LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No 1079- 1080 /2008 –SM[BR]**. dated 29.5.2008

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. NOIDA

   B-123, SECTOR 5 NOIDA.
2. Adv. / Consult

   MR.NAVEEN MULLICK

   B-388, MERA BAGH, NEW DELHI-63.
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. 3346-3347/06

(Arising out of order in appeal No. 100-101/CE/Appl/Noida/06 dated 17.7.06 passed by the Commissioner of Central Excise (Appeals), Noida)

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

M/s Shreshid Interiors Pvt Ltd
Shri Devinder Soni

Appellant
(Rep. by Shri Naveen Mullick, Advocate)

Vs

CCE, Noida

Respondent
(Rep. by Shri S. Gautam, DR)

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

Date of Hearing: 29.5.08

Final Order No. 1079-1080 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case as per record, in brief, are that the appellant No. 1 company is engaged in the manufacture of Wooden Furniture and allied wooden items classifiable under Chapter 94 of the

Schedule to the Central Excise Tariff Act, 1985. On 28th November, 2003, the Central Excise officers visited the appellants factory and ascertained shortage of raw materials and finished goods. They also ascertained excess finished goods against the balance in RG.I register. The officers recorded the statement of Shri Devender Soni, Manager (Excise) Appellant No. 2 herein. The appellants deposited the entire amount of duty before issue of show cause notice. The Adjudicating Authority confiscated the seized goods and imposed redemption fine of Rs. 60,000/- and also confirmed demand of duty of Rs. 28,577/- and appropriated the amount of Rs. 22,236/- as deposited by them and imposed penalty of Rs.25,000/- under Central Excise Rules, 2002 on appellant No.1. A personal penalty of Rs. 5,000/- was imposed on Shri Devender Soni, Manager, Appellant No.2 herein under Rule 26 of the Rules. The Commissioner (Appeals) upheld the Adjudication order.

2. The learned Advocate on behalf of the appellants submits that the demand of duty, penalty and confiscation of seized goods are not sustainable. He submits that Appellant No. 2 in his statement stated that the reason for shortage of excisable goods, ~~are the shortage in production~~. He submits that no enquiry was conducted by the officers in this regard at any point of time. He also submits that RG.I register and RG. 23-A Part II register were incomplete and therefore, there was shortage. He further submits that in any event, it is a case of non-accountal of goods and therefore, penalty and confiscation are not sustainable as held by the Hon'ble Punjab & Haryana High Court in the case of CCE, Jalandhar Vs Indo Gem Ltd reported in 2007 (7) RLT 245.

3. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that it is revealed from the adjudication order that shortage and excess were ascertained after considering the production and dispatch in the statutory record. He further submits that no mens-era is applicable for confiscation of the goods as held by the Tribunal in the case of PNP Casting (P) Ltd Vs. CCE Lucknow reported in 2006 (194) ELT 250 (Tri-Del).

4. After hearing both the sides and on perusal of the record, it is seen from the adjudication order that the appellant No. 2 in his statement dated 28/29.11.2003 accepted the discrepancies in the stock of finished goods and inputs. He stated that the reason for shortage would be informed after discussing the production in charge and they shall pay duty after consulting with the management. Thereafter the appellant deposited the duty before issue of show cause notice. Thus the contention of the learned Advocate that there was no shortage of raw material and finished goods, has no merit.

5. Regarding the excess quantity of finished goods, the learned Advocate submits that the RG.I was written upto 25th November, 2003 and the officers visited the factory on 28th November, 2003. He further submits that the excess quantity is the production during the period from 25th to 28th November, 2003. I find that the adjudicating authority has given detail finding and the production of 28th November, 2003 has been considered alongwith the dispatches made on 25/26th and 27.11.2003. In any event, I agree with the submission of the leaned Advocate that this is a case of non-acountal of goods. The Adjudicating Authority also observed that these are unaccounted goods lying in the factory. The learned Advocate relied upon

the decision of the Hon'ble Punjab & Haryana High Court in the case of Indo Gem Ltd (supra). In the said case, there was non-accountal of goods and the assessee had explained that due to death of a close relative, he could not furnish the production details. In the present case, there is no such explanation given by the appellant and therefore, the said case law is not applicable herein. The Tribunal in the case of PNP Casting (P) Ltd (supra) held that no mens-era is required for confiscation and imposition of redemption fine and penalty under Rule 25 of the Rules.

6. After considering the overall facts and circumstances of the case, I find that there was excess and shortage of stock ascertained during stock verification. There is no material ~~mterial~~ of clandestine removal of goods. Therefore, demand ~~payment~~ of duty is upheld. I find that amount of fine and penalty is excessive. The redemption fine and the penalty are reduced to Rs. 25,000/- and Rs. 15,000/- respectively. I find that appellant No.2 is the Manager of the appellant No.1 Company. So, penalty under Rule 26 of the Rules is not warranted. Accordingly, penalty on appellant No.2 is set aside. The appeal of Appellant No.2 is allowed. The appeal of Appellant No.1 is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judl)

MPS*