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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/3741 – 3747 / 2006 –SM[BR] Date 14/08/2008

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant

Vs

M/S RALSON CARBON BLACK LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1140 – 1146 /2008-SM[BR] dated 6.6.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S RALSON CARBON BLACK LTD
   JITWAL KALAN, MALERKOTLA.
   (2) M/S SHIV SHAKTI CONCAST PVT.LTD.
   SANGRUR ROAD, DIRBA
   (3) M/S RALSON CARON BLACK LTD
   JITWAL KALON MALERKOTLA
   [4] M/S RALSON CARBON BLACK LTD.
   JITWALA KALAN MALERKOTALA
   [5] M/S RALSONCARBON BLOCK LTD.
   JITWALA KALON MALERKOTLA
   [6] M/SBHIWANI TUBES PVT.LTD.
   SANGRUR ROAD DIRBA DISTT; SANGRUR [P.B]
2. Adv. / Consult
   MR.PIYUSH KUMAR,ADV
   B-25,LAJPAT NAGAR-III,N.DELHI
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. 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

[7]M/S RALSON CARBON BLACK LTD.
JITWAL KALAN MALERKOLA

Assistant Registrar
(SM Appeal Branch)

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

E/Appeal Nos.3741-3747/06 -SM

(Arising out of order in appeal No.23, 29, 26, 25, 22, 28, 24 /CE/Appl/Jal/06 dated 17.8.06 , 24.8.06, 17.8.06, 17.8.06, 17.8.06, 24.8.06, 17.8.06 passed by the Commissioner of Central Excise (Appeals), Ludhiana)

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?

CCE, Ludhiana — Appellant
(Rep. by Shri S. Gautam, DR)

Vs

M/s Ralson Carbon Black Ltd — Respondent
M/s Shiv Shakti Concast (P) Ltd (Rep. by Shri A.K. Mishra, Advocate)
M/s Bhiwani Tubes (P) Ltd

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

Date of Hearing: 6.6.08

Final Order No. 1140-1146 /2008-SM(BR)

Per P.K. Das:

Common issue is involved in these appeals and therefore, all are being taken up together for disposal.

2. All the cases, the respondents had delayed in discharging duty liability by not paying it on due dates in contravention of Rule 8(1) of Central Excise Rules, 2002. The Adjudicating Authority had ordered forfeiture of the facility available to the respondents to pay duty in monthly installments for a period of two months under sub-rule (1) of Rule 8 of the said Rules. The Commissioner (Appeals) modified the Adjudication Order, in the case of M/s Ralson Carbon Black Ltd, it was reduced to three weeks and in the case of other respondents, it was reduced to one month.

3. After hearing both the sides and on perusal of the record, it is seen that the contention of the learned DR that there is no scope of relaxation for forfeiture of the facility in the rules and the period of two months prescribed under Rule is mandatory. It has been further contended by the learned DR that the Commissioner (Appeals) has no power to reduce the forfeiture facility as prescribed under Rules.

4. It is seen that the Tribunal in the case of Calcom Vision Ltd Vs CCE Meerut-I reported in 2002 (142) ELT 383 (Tri.-Del) held that forfeiture facility for a maximum period of two months is not mandatory. So, the contention of the learned DR that in view of the decision of the Tribunal in the case of Calcom Vision Ltd (Supra) is not acceptable. Now, the reduction of the period of forfeiture facility by the Commissioner (Appeals) is examined herein below:-

A) E/Appeal Nos. 3741, 3743-3745 and 3747/06:- It is contended by the respondent namely M/s Ralson Carbon Black Ltd that they delayed part payment of duty for the reason that they were facing grave financial crisis and they were declared sick unit by BIFR. There is a delay in discharging payment of duty from 36 days to 54 days in different appeals. The Hon'ble Andhra Pradesh High Court in the case of CCE, Guntur Vs Andhra Cement Ltd reported in 2007 (216) ELT 362 (A.P) while imposing penalty under Rule 25 of the Central Excise Rules, 2002, observed as reproduced below:-

"In the present case, there is a finding of the Tribunal that the circumstances were beyond the control of the respondent-company as the matter was pending before BIFR, and as such, the amounts could not be deposited by the respondent-company, within the time and as soon as it was in a position to make the payment, the respondent-company made the payment not only of the duty, but also of the interest calculated under Rule 8(3) of the Rules. Therefore, we have no doubt in our mind that the Tribunal has correctly interpreted Rule 25 of the Rules and penalty could not be imposed on the respondent-company."

In the present case, the respondent paid the duty partly and the balance amount was paid with interest. The respondent-company was declared sick by BIFR. Therefore, the forfeiture of facility for two months is excessive and the Commissioner (Appeals) has rightly reduced it to three weeks in all cases.

B) E/Appeal Nos. 3742 and 3746/06:- In both the Appeals, the Commissioner (Appeals) reduced the forfeiture of facility from two months to one month. It is seen that in Appeal No. 3742/06, the respondent M/s Shiv Shakti Concast (P) Ltd paid the duty of Rs. 8,54,666/- within time and there was a default of payment of duty of Rs.88,696/- which was paid with interest. Similarly, in Appeal No. 3746/06, the respondent M/s Bhiwani Tubes (P) Ltd paid the duty of Rs. 7,49,285/- within due date and there was a delay of payment of Rs. 45,289/- which was paid with interest. The

Hon'ble Gujarat High Court in the case of Banian & Berry Bearing Pvt Ltd Vs Union of India reported in 2002 (52) RLT 755 (Guj.), has held as under:-

"However, considering the fact that in para 8 of the order dated 28.5.2002 the Additional Commissioner has already explained the provision of the Rule and looking to the extent of the delay and the principle of 'lex non curat de minimis' (the law does not care for trifles), the Additional Commissioner was justified in discharging the notice and in this view of the matter, the Deputy Commissioner of Central Excise also ought not to have issued the order dated 3.7.2002 especially when the delay was very marginal and the duties were already paid by the petitioners with 24% interest.

Relying on the principle of 'lex non curat de minimis, we are of the view that the petitioners could not have been deprived of the facility to pay the dues in instalments under erstwhile Rule 173-G(1)(e) of the Central Excise Rules, 1944 and under Rule 8(4) of the Central Excise (No.2) Rules, 2001 on the basis of the aforesaid facts."

In the present case, it is seen that the respondent paid substantial amount within due date. Therefore, the Commissioner (Appeals) has rightly reduced the period of forfeiture facility from two months to one month.

5. In view of the above discussion, I do not find any merit in the appeals filed by the Revenue. Accordingly, all the appeals are rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*