(16)

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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/ 2104 - 2105 /2006 -SM[BR] Date 25/08/2008

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant
Vs
M/S BAJRANG STEEL ROLLING MILLS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1189 - 1190 / 2008 -SM[BR] dated 16.6.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
1. M/S BAJRANG STEEL ROLLING MILLS
2. SHRI MOHD. SHAMIR, AUTHORISED SIGNATORY,
AMLOH ROAD,MANDI GOBINDGARH, PUNJAB
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. 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 Appeal Branch)

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

PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.2104 and 2105 of 2006-SM (BR)

[Arising out of common Order-in-Appeal No.236-237/CE/CHD/06 dated 30.03.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:16.06.2008

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? :

NO

CCE, Chandigarh ...Appellants
[Rep. by Shri A.K. Rastogi, DR.]

Vs.

1)M/s.Bajrang Steel Rolling Mills
2)Mohd. Shamir, Authorised Signatory ....Respondents
[Rep. by None.]

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

Final Order No.1189-1190/2008 SM(BR)/Dated:16.6.2008

Per P.K. Das:

Both the appeals are arising out of a common order and, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief as per record, are that the central excise officers ascertained shortage of finished goods during the stock verification. The Respondents deposited the duty before issue of show cause notice. It has been admitted that the goods were cleared without issue of invoice and without accounting for in the records. The Adjudicating Authority confirmed the demand of duty of Rs.66,870/- and appropriated the duty as deposited by them before issue of show cause notice and also imposed penalty of equal amount under Rule 25 of the Central Excise Rules, 2002 read with Section 11 AC of Central excise Act, 1944. He also imposed penalty of Rs.10,000/- on Mohd. Shamir, Authorized Signatory, Respondent No.2 herein. The Commissioner (Appeals) modified the Adjudication Order in so far as penalty was reduced to Rs.15,000/- on the Respondent No.1 and penalty was set aside on the Respondent No.2.

3. Ld. DR on behalf of the Revenue submits that it is a clear case of clandestine removal and, therefore, equal amount of duty was rightly imposed by the Adjudicating Authority under Section 11 AC of the Act. He further submits that the Respondent No.2 was involved in the clandestine removal of the goods and the penalty was rightly imposed by the Adjudicating Authority.

4. After hearing the ld. DR and on perusal of the records, I find that the shortage was detected during the stock verification and the Respondents in their statement admitted that the goods were cleared

without payment of duty. So, I agree with the contention of the ld. DR that it is a case of clandestine removal and Section 11 AC will be invoked in this case. The Hon'ble Delhi High Court in the case of Malbro Appliances Ltd. reported in 2007 (208) ELT 503 (Delhi) held that proviso to sub-section (1) of Section 11 AC of Central Excise Act provides imposition of penalty 25% of the duty if the duty is deposited within 30 days of receipt of the Adjudication Order. The Hon'ble High Court upheld the order of the Tribunal, wherein penalty of 25% of duty was imposed as the duty was deposited before issue of show cause notice. In the present case, the Respondent deposited duty before issue of show cause notice and the Commissioner (Appeals) reduced the penalty to Rs.15,000/-, which is approximately 25% of duty. I agree with the findings of the Commissioner (Appeals) in respect of setting aside of penalty on the Respondent No.2.

5. In view of the above discussion, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, both the appeals filed by the Revenue are rejected.

Order dictated & pronounced in open court on 16.06.2008.

(P.K. Das)
Member (Judicial)

Ckp.