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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/2373/2006-2374/2006-SM[BR] Date 28/08/2008

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

To :
CCE,LUDHIANA
CE HOUSE RISHI NAGAR LDH
CCE,LUDHIANA Appellant
Vs
M/S ANNAPURNA IMPEX P LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1201 – 1202 /2008 –SM[BR] dated 17.7.2008 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 ANNAPURNA IMPEX P LTD
2. SHRI NAVEET AGARWAL
327,INDL AREA,A-CHEEMA CHOWK LDH

2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.
H. NO. 631 [F.F.]SECTOR 11-B, CHANDEGARH

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)

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

E/Appeal Nos.2373-2374/06 -SM

(Arising out of order in appeal No.77/CE/AC/Ldh.I/05 dated 30.12.05 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, Ludhiana — Appellant (Rep. by Shri S. Gautama, DR)

Vs

1.M/s Annapurna Impex Pvt Ltd
2. Shri Naveet Agarwal — Respondent (Rep. by Shri V. Kackria, Advocate)

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

Date of Hearing: 17.7.08

Final Order No. 1201 - 1202 /2008-SM(BR)

Per P.K. Das:

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

2. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of Copper Wires and Copper Wire Bars classifiable under Chapter 74 of the Schedule to the Central Excise Tariff Act, 1985.

3. On 3rd February, 2005, the Central Excise officers visited the respondents factory and ascertained excess quantity of raw material and finished goods which were duly seized by them. The Adjudicating Authority confiscated the seized goods and imposed redemption fine of Rs.1,56,100/-. He confirmed the demand of duty of Rs. 35,421/- on the excess quantity of finished goods and imposed penalty of equal amount and also imposed personal penalty of Rs. 35,421/- on the Respondent No.2, Director of Company. The Commissioner (Appeals) modified the Adjudication order in so far as confiscation and redemption fine were set aside and penalty was reduced to Rs.10,000/- on Respondent No.1. He also set aside the penalty on Respondent No.2. So, the Revenue filed these appeals against the order of Commissioner (Appeals) for enhancement of penalty and confiscation.

4. The learned DR reiterates the grounds of appeal. He submits that admittedly excess quantity of raw materials and finished goods were found against the recorded balance of stock registers. He also submits that the Commissioner (Appeals) had not followed the decision of the High Court.

5. `The learned Advocate on behalf of the respondents, reiterates the finding of the Commissioner (Appeals). He submits that the respondents had not availed any benefit namely Cenvat credit on the raw material and

such raw materials are not liable to confiscation. He relied upon the following decisions of the Tribunal:-

a) CCE, Delhi-I Vs. Oceanic Cooling Towers (P) Ltd
2003 (161) ELT 631 (Tri.-Del)

b) Mohindra Enterprises Vs CCE Jalandhar
2007 (214) ELT 81 (Tri.-Del)

c) Camex Intermediates Ltd Vs CCE Surat-II
2008 (221) ELT 588 (Tri.-Ahmd.)

d) CCE, Meerut Vs Bharat Steel Rolling Mills
2007 (219) ELT 166 (Tri.-Del)

e) Unimark Remedies Ltd Vs CCE Vapi
2006 (204) ELT 49 (Tri.-Mum)

6. After hearing both the sides and on perusal of the record, the relevant portion of the finding of the Commissioner (Appeals) is reproduced below:-

"I have carefully examined the case records including the appellants submissions made in writing and at the time of personal hearing and observe that the Adjudicating Authority has confiscated the goods valued at Rs. 3,12,198/- out of which Rs. 2,33,076/- were of raw material and goods valued at Rs. 7,800/- were of work in progress. There is no provision for confiscation of raw materials and work in progress. Moreover the final goods and scrap was lying in the factory and it is not a case of clandestine removal unless proved by the corroborative evidence. As the appellant have failed to maintain the proper accountal of the goods in question, I impose a penalty of Rs. 10,000/- upon them.

There is no reason in the imposition of penalty on the Director as held by the Tribunal in the case of Jayakrishna Aluminium Ltd Vs CCE Chennai reported in 2005 (187) ELT 234 (Tri.)"

It is seen that the Tribunal consistently viewed in a series of decisions that there is no provision under the Central Excise law for confiscation of raw material not accounted. It has been held that penalty can be imposed. In the present case, no cenvat credit was availed on the raw materials. In the case of Mohindra Enterprises (supra), it has been held that assessee was neither a producer nor registered producer or dealer but merely a user of raw material, hence goods cannot be called excisable goods in terms of Section 2(d) of the erstwhile Central Excise Rules, 1944. It has further been observed that the raw material was received by the assessee. Therefore, this cannot come under the category of excisable goods. The Adjudicating Authority observed that the finished goods were lying unaccounted. It is noted that the value of the seized goods including raw materials and finished goods is Rs. 3,12,198/- out of which Rs. 2,33,076/- were of raw material, which is not confiscable. Commissioner (Appeals) had given detailed reason for setting aside of confiscation of finished goods

7. Considering the overall facts and circumstances of the case, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, both the appeals filed by the Revenue are rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*