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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

Date 01/09/2008

Appeal No. E/3853/2006-SM[BR]

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

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

Appellant

C.C.E.CHANDIGARH

Vs

Respondent

M/S JAGAN TUBES LTD

I am directed to transmit herewith a certified copy of **Final order No.**1227 / 2007-SM[BR] dated 25.7.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S JAGAN TUBES LTD
   VILL- GHOLUMAJRA, DISTT- MOHALI.
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 25.7.2008

E/Appeal No. 3853/2006-SM(BR)

(Arising out of Order –in-Appeal No. 137-CE/Appl/KNP/06 dated 13.3.2006 passed by the Commissioner (Appeals) Customs & Central Excise, Kanpur)

For approval and signature:

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

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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 Chandigarh — Appellant/Applicant
(Rep. by Shri A.K. Rastogi, DR)

Vs.

M/s Jagan Tubes Ltd. — Respondent
(None)

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

Final Order No. 1227/02-SM(BR)

Per: P.K. Das

Heard the ld. DR on behalf of the Revenue None appeared on behalf of the Respondent inspite of issue of notice.

2. The relevant facts of the case in brief are that the Respondent was engaged in the manufacturer of E.R.W. Pipes & Galvanized Pipes falling under Chapter sub-heading No. 7306.90 of the First Schedule to the Central Excise Tariff Act, 1985. It is noticed that the Respondent were not maintaining separate records in respect of inputs being used in the manufacture of exempted goods. In pursuance to Rule 6 (3) (b) of Cenvat Credit Rules 2004, the Respondents debited the amount of 10.2% of total price excluding Sale Tax and other Taxes, at the time of removal of exempted goods from factory. It has been alleged that they have collected the said amount from there customers as Excise duty and therefore, it is hit by Section 11 D of Central Excise Act, 1944. The Adjudicating Authority confirmed the amount of Rs. 9,97,715.00 collected as Excise duty and not paid to the Govt. in terms of Section 11 D of Central Excise Act, 1944 alongwith interest and imposed penalty

of equal amount. The Commissioner (Appeals) set-aside the Adjudication Order. Hence, the Revenue filed this appeal.

3. The ld. DR on behalf of the Revenue submits that the Respondent cleared the exempted good at nil rate of duty and they have also recovered the amount of 10.2% as duty from the customers. He further submits that the amount deposited under Rule 6 (3) (b) of the Rules is separate and distinct and can not be treated as duty. He also submits the charging of 10.2% from the customers on the exempted goods is collection of Excise duty on the said goods and therefore, they are liable to deposit the said amount to Govt. Account under Section 11D of the Act.

4. After hearing the ld. DR and on perusal of the records, it is seen from the impugned order that the Respondent debited the amount of 10.2% at the time of clearance of the exempted goods and they have collected the said amount from their customers. At the request of Bench, the ld. Advocate Shri Hemant Bajaj placed the decision of the Larger Bench of the Tribunal in the case of Unison Metals Ltd. Vs. CCE, Ahmedabad-I reported in 2006 (204) ELT 323 (Tri.-LB). It has been held that the amount recovered from the buyer and not retained by

the assessee and deposit thereon Section 11 D can not be invoked. The relevant portion of the said decision is reproduced below:-

> "The scheme of Central Excise duty payment is that a manufacturer removed goods from the factory of production after payment of duty. While selling the goods, the manufacturer recovered the duty so paid. In doing so, an assessee is recouping the tax already paid. The arrangement is not that the assessee first collected the tax from the buyer of the goods and then remits the amount to the government. Section 11 D has to be read keeping this scheme in view. Therefore, the provisions for "every person who is liable to pay duty….. and has collected any amount from the buyer of any goods in any manner representing as duty of excise, shall, forthwith pay the amount so collected to the credit to the Central Government" has application only when equivalent duty had not been deposited at the time of removal of the goods. The scheme of the law is that manufacturers shall not collect amounts falsely representing them as central excise duty and retain

them, thus, unjustly, benefiting themselves. In the present cases, irrespective of whether the 8% payments were duty or not) since the 8% amount remain already paid to the revenue, and no amount is retained by the assessee, Section 11 D has no application."

5. In the present case, there is no dispute that the amount 10.2% recovered by the Respondent was not retained by them and paid to Government. So, Section 11 D of the Act cannot be invoked. In view of the decision of the Larger Bench of the Tribunal in the case of Unison Metals Ltd. Vs. CCE, Ahmedabad-I reported in 2006 (204) ELT 323 (Tri.-LB) (supra), the order of Commissioner (Appeals) is upheld. The appeal filed by the Revenue is rejected.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta