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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/1402/2006-SM[BR] Date 03/09/2008

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

To :
M/S AMRIT VARSH INDUSTRIES (THROUGH
COUNSE C. HARI
VILLAGE DHOOM-MANIKPUR, DADRI, B.S.ROAD,
GHAZIABAD

M/S AMRIT VARSH INDUSTRIES (THROUGH
COUNSE C. HARI Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE
GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1234 / 2008 –SM[BR] dated 1.8.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

   THE COMMISSIONER OF CENTRAL EXCISE GHAZIABAD

   MEERUT-I, CGO COMPLEX II, KAMLA NEHRU NAGAR, GHAZIABAD
   201002
2. Adv. / Consult
   MR.C.HARISHANKAR

   46, BANK ENCLAVE,DELHI-110092

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

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

E/Appeal Nos.1402/2006-SM

(Arising out of order in appeal No.17/GE/Gzb/06 dated 27.2.06 passed by the Commissioner of Central Excise (Appeals), Ghaziabad)

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?

N.

M/s Amrit Varsha Industries — Appellant
(Rep. by Shri S. Surya, Advocate)

Vs

CCE, Ghaziabad — Respondent
(Rep. by Shri Rajmal, DR)

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

Date of Hearing: 1.8.08

Final Order No. 1234 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of MS Channels, MS Angels, MS Girders and MS Ingots.

2. On 10th October, 2003, the Central Excise officers visited the appellants factory and conducted stock verification of raw materials and finished goods. They ascertained excess quantity of stock of finished goods in comparison to balance shown in the stock register. The Adjudicating Authority confiscated the excess quantity of goods and imposed redemption fine of Rs. 3 lakhs and penalty of Rs.2,00,652/- upon the appellants. The Commissioner (Appeals) upheld the adjudication order.

3. The learned Advocate on behalf of the appellants submits that the representative of the appellants in his statement stated that excess stock of goods may be on account of accumulated accountal mistake. He further submits that the appellant had not weighed the finished goods at the time of production. It is his submission that finished goods were weighed at the time of clearance. He also submits that there is no iota of evidence of clandestine removal of goods and the finding of both the authorities below is without any basis.

4. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that the appellants failed to make proper reasons for excess stock. He also submits that huge quantity of finished goods was lying in godown. So, the Adjudicating Authority is justified to impose redemption fine and penalty.

5. After hearing both the sides and on perusal of the record, it is seen from the impugned order that the Commissioner(Appeals) observed the

excess stock was detected by the Central Excise officers during the stock verification which clearly shows the malafide as well as mens-era in reaching the conclusion that they were in a mood to remove the goods clandestinely without payment of Central Excise duty.

6. Shri P.D. Saini, Representative of the appellants in his statement dated 10.10.83 stated that the excess stock of goods may be on account of accountal mistake over a period of 11 months since their factory was under production. In my view, the finding of the Commissioner (Appeals) that the appellants did not declare the excess quantity and the excess quantity was detected during stock verification which includes the malafide of the appellants, is not acceptable. It is seen that the excess quantity was detected during stock verification and there is no material on record that the appellants attempted to remove the goods clandestinely. In any event, I agree with the submission of the learned DR that huge quantity of finished goods was found in excess in their stock and no reasonable explanation was given by them. So, the confiscation of the goods and imposition of fine and penalty are justified. However, the amount of redemption fine and penalty is excessive. Accordingly, the impugned order is modified in so far as redemption fine and penalty are reduced to Rs.1,50,000/- and Rs.1,00,000/- respectively. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*