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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/3115 & 2359 / 2006-SM[BR] Date 03/09/2008

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

To :
M/S TECHNOCRAT TRANSFORMERS
D-37,UPSIDC,INDUSTRIAL AREA,SITE-C,SIKANDRA,AGRA

[2]M/S TECHNOCRATE TRANSFORMERS
D-32, UPSIDC , INDUSTRIAL ESTATE SITE-C, SIKANDRA, AGRA

M/S TECHNOCRAT TRANSFORMERS Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1236 – 1237 / 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
   C.C.E. KANPUR
   117/7,SARVODAYA NAGAR,KANPAUR.
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW 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

Assistant Registrar
(SM Appeal Branch)

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

E/Appeal Nos.3115 & 2359/06 -SM

(Arising out of order in appeal No.128/CE?Appl/KNP/05/580 dated 13.3.06 passed by the Commissioner of Central Excise (Appeals), Kanpur)

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?

M/s Technocrat Transformers — Appellant
(Rep. by Shri Atul Gupta, Advocate)

Vs

CCE, Kanpur — Respondent
(Rep. by Shri S. Gautam, DR)

....

CCE, Kanpur — Respondent
(Rep. by Shri S. Gautam, DR)

Vs

M/s Technocrat Transformers — Appellant
(Rep. by Shri Atul Gupta, Advocate)

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

Date of Hearing: 17.7.08

Final Order No. 1236-1237 /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 assessee was engaged in the manufacturer of Transformers as well as they were repairing the Transformers during the period from December, 2002 to February 2004. They used the duty paid Transformer oil for repair of Transformer without reversing credit in RG 23A Part II record. However, the assessee mentioned the use of transformer oil for repair of transformers in registers. The Central Excise officers visited their factory on 27th February, 2004. After conducting stock verification of raw materials and finished goods, no discrepancy was found. Statement of the Representative of the assessee was recorded wherein he stated that due to financial hardship, they could not reverse the credit in RG 23A Part II account. The Assessee reversed the entire amount of credit alongwith interest before issue of show cause notice. The Adjudicating Authority confirmed the payment of duty of Rs. 6,26,708/- and appropriated the said amount as deposited by them. He also imposed penalty of equal amount under Section 11AC of Central Excise Act, 1944. The Commissioner (Appeals) reduced the penalty to Rs.1,20,000/-. The Assessee filed this appeal for setting aside the penalty. The Revenue filed this appeal for enhancement of penalty equal to amount of duty.

3. After hearing both the sides and on perusal of the record, it is seen from the impugned order that there is breech of Central Excise Rules on the part of the assessee as they did not reverse the credit while using the transformer oil for repair of transformers. The Commissioner (Appeals) observed that in view of the facts and circumstances of the case, penalty equivalent to duty is higher and also noted that the assessee deposited the duty before issue of show cause notice.

4. On perusal of the show cause notice, it is seen that the duty was calculated on the basis of quantity of transformer oil issued as revealed from RG 23A Part I register for repair of transformer. Thus, there is no material that the assessee had intention to evade payment of duty. The Tribunal in the case of Condor Power Products Pvt Ltd Vs CCE Faridabad reported in 2007 (210) ELT 137 (Tri-Del.) held that the appellants disclosed the transaction by filing return and liability to pay duty was not disputed. There was delay in payment of duty due to financial crisis and no intention to evade payment of duty and penalty imposed under Rule 25 of Central Excise Rules, 2002 was set aside. In view of the decision of the Tribunal in the case of Condor Power Products Pvt Ltd (supra) and after considering the facts of the case, I find that there is no material placed by the Revenue to invoke Section 11AC of the Act.

5. Accordingly, I do not find any merit in the appeal of the Revenue. However, I agree with the finding of the Commissioner (Appeals) that there is a breach of Central Excise Rules and the appellants have not reversed the credit for a long time and penalty is imposable. However, considering the

facts and circumstances of the case, the penalty is reduced to Rs.50,000/-.

The assessee's appeal is disposed of in the above terms.

The appeal filed by Revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*