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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/3006/2006 & 3551 / 2006 -SM[BR] Date 03/09/2008

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

To :
M/S BENARA UDYOG LTD.

BHARATPUR ROAD,BODLA,AGRA(UP)

M/S BENARA UDYOG LTD. Appellant

Vs

C.C.E. KANPUR. Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 1238 – 1239 / 2008 -SM[BR] dated 22.7.2008 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,KANPUR.
2. Adv. / Consult

   MR.K.K ANAND

   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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.3006 & 3551 of 2006-SM (BR)

[Arising out of common Order-in-Appeal No.192-CE/APPL/KNP/2006 dated 18.05.2006 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:22.07.2008

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? :

N.

Appeal No.E/3006/06-SM (BR)

M/s. Benara Udyog Ltd. ...Appellants

Vs.

CCE, Kanpur ...Respondent

Appeal No.E/3551/2006-SM (BR)

CCE, Kanpur ...Appellant

Vs.

M/s. Benara Udyog Ltd. ...Respondent

Party represented by Shri Hemant Bajaj, Advocate
Department represented by Shri A.K. Restogi, DR

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

Final Order No. 1238-39/08-SM(BR) /Dated:22.07.2008

Per P.K. Das:

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

2. The relevant facts of the case, in brief, are that the assessee has been engaged in the manufacture of Plain Shaft Bearings and Bi-metal Strips and Copper Lead Powder classifiable under sub-heading No.8483.90, 7212.90 and 7606.00 of the Schedule to the Central Excise Tariff Act, 1985. On 23.07.2004, the Central Excise Officers visited the assessee's factory and verified the stock. The said officers ascertained shortage of the finished goods during stock verification. The representative of the assessee failed to give any reason for shortage and deposited the duty of Rs.58,752/- through PLA vide Entry No.02 dated 28.7.2004. The Adjudicating Authority confirmed the demand of duty and appropriated the amount as deposited by the assessee. He also imposed penalty of equal amount separately under Section 11 AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002. The Commissioner (Appeals) reduced the penalty to Rs.30,000/- under

both the provisions. The assessee filed appeal for setting aside the penalty. Revenue filed appeal for enhancement of penalty of equal amount of duty under Section 11 AC of the Act.

3. Ld. Advocate on behalf of the assessee submits that the shortage was detected during stock verification and the assessee deposited the duty immediately before issue of show cause notice. He further submits that there is no evidence of clandestine removal of the goods and, therefore, no penalty can be imposed. He relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Ludhiana Vs. Omkar Steel Tubes (P) Ltd. – 2008 (221) ELT 200 (P&H) and the decision of the Tribunal in the case of Commissioner of Central Excise, Ahmedabad Vs. Pole Star Industries Ltd. – 2007 (216) ELT 257 (T-Ahmedabad). He further submits that the Commissioner (Appeals) imposed composite penalty, which is not permissible under the law. He relied upon the decision of the Tribunal as under:-

(1) A. Jay Processors Ltd. Vs. CCE, Thane
2007 (11) RLT 863 (CEGAT-M)

(2) Advel (I) Pvt. Ltd. Vs. CCE
2004 (64) RLT 79 (CEGAT-M)

4. Ld. DR on behalf of the Revenue submits that the Representative of the assessee failed to give any reason for the shortage of the goods, it is presumed that the goods were clandestinely removed and, thereof,

penalty under Section 11 AC is warranted. He further submits that the Commissioner (Appeals), failed to consider the facts and circumstances of the case, reduced the penalty on the ground of contravention of the rules. He submits that at least penalty under Rule 25 of the Rules is applicable herein.

5. After hearing both the sides and on perusal of the records, it is seen that the shortage was detected during stock verification and the Appellant failed to give any explanation for the shortage. However, the assessee immediately deposited the duty, which was appropriated by the Adjudicating Authority. I do not find any material for clandestine removal of the goods. The submission of the ld. DR that the imposition of penalty on the basis of presumption of clandestine removal, has not merit. The Hon'ble High Court in the case of Omkar Steel Tubes (P) Ltd. (supra), on the similar situation, dismissed the appeal filed by the Revenue. In view of that, I find that imposition of penalty under Section 11 AC of the Act is not justified. However, I agree with the findings of the Commissioner (Appeals) that there is a contravention of the Rules and, therefore, penalty is imposable. Ld. Advocate submits that imposition of penalty under several provisions is not sustainable. On perusal of the adjudication order, it is seen that the Adjudicating Authority imposed penalty separately. In view of that, the case laws

referred by the ld. Advocate are not applicable herein. After considering the facts and circumstances of the case, penalty under Section 11 AC of Central Excise Act, 1944 is set aside and penalty under Rule 25 of Central Excise Rule is reduced to Rs.10,000/- (Rupees Ten Thousand only). The Appeal No.E/3551 of 2006-SM (BR) is rejected. Appeal No.E/3006/2006-SM (BR) is modified as above.

Order dictated & pronounced in open court on 22.7.2008.

(P.K. Das)
Member (Judicial)

Ckp.