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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/3977/2006- SM[BR] E/ MISC / 402 / 2008 Date 05/09/2008

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

To :
M/S AMCO INDIA LIMITED

7TH MILE STONE, BHIWADI, ALWAR.
2. SH B.S.GUPTA,CONSULTANT, E-67, SHASTRI
NAGAR, JAIPUR.

M/S AMCO INDIA LIMITED — Appellant

Vs

C.C.E.JAIPUR I — Respondent

I am directed to transmit herewith a certified copy of **Final order No 1273 / 2008 –SM[BR]& M /235 /2008** . dated 4.7.2008

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.JAIPUR I

   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR.
2. Adv. / Consult

   MR.V K AGGARWAL

   B-82, LAJPAT NAGAR, PART-2, NEW DELHI-110024

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: 04.7.2008

E/Misc. Application No. 402/2008-SM(BR)
Excise Appeal No. 3977/2006-SM(BR)

[Arising out of the order-in-Appeal No. 236-237(GRM)CE/JPR-I/2006 dated 28.09.2006/13.10.2006 Passed by the Commissioner, Central Excise, Jaipur]

For Approval and Signature:

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

	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	N
	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
	Whether their Lordships wish to see the fair copy of the Order?	
	Whether Order is to be circulated to the Departmental authorities?	

M/s Amco India Ltd. — Appellants
vs.
C.C.E. Jaipur — Respondent

Appearance:

Shrii V.K. Agarwal, Advocate for the Appellant
Shri K.K. Goyal, Authorized Jt.Departmental Representative (JDR) for the Revenue

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

Misc order No. 235/08-SM(BR)
Final Order No. 1273/08-SM(BR)

Per: P.K. Das:

The relevant facts of the case in brief are that the Central Excise Officers during their visit to the Appellants factory on 25/26.7.2008 detected that the Appellant availed cenvat credit of Rs. 2,29,439.00 on demaged inputs as well as they received insurance claim on the damaged goods. But the Appellant had not reversed credit availed by them. It has also noticed that the Appellant cleared samples involving Central Excise duty of Rs. 26,563.00 without payment of duty. Upon detection by the Central Excise Officers, the Appellants paid the duty of Rs. 2,56,002.00. The Adjudicating Authority confirmed the demand of duty and imposed penalty of equal amount under Section 11 AC of Central Excise Act, 1944. Commissioner (Appeals) upheld the Adjudication Order.

2. The Ld. Advocate on behalf of the Appellants submits that the entire transaction was recorded in their register and, therefore, allegation of the suppression of facts with intent to evade payment of duty etc. are not sustainable. He submits that the applicant deposited the duty before issue of Show Cause Notice and penalty under Section 11 AC of he Act is not warranted. He relied upon the decision of the Hon'ble Rajasthan High Court in the case of Union of India vs. T.P.L. Industries Ltd. 2007 (214) ELT 506 (Raj).

3. The Ld. DR reiterates the findings of Commissioner (Appeals). He submits that the Central Excise Officers during their visit to the Appellant's factory detected the irregularity and imposition of mandatory under Section 11 AC of the Act is justified. He relied upon the decision of the Tribunal in the case of Commissioner of Central Excise, Jaipur Vs. M/s Agarwal Cotton Mills 2007-TIOL-1767-CESTAT-Del.

4. After hearing both the sides and on perusal of records it is seen from the order of the Commissioner (Appeals) that the Appellant cleared the sample without payment of duty. It is also detected that the Appellant received insurance claim on defective inputs. But they had not reversed the credits. Thus, it is a clear case of suppression of facts with intent to event payment of duty. In this situation penalty under Section 11 AC of the Act is imposeable

5. The Hon'ble Delhi High Court in the case of Commissioner of Central Excise Vs. Malbro Appliances P. Ltd 2007 (208) ELT 503 (Del.) held that first proviso to section 11 AC (1) is providing for penalty of 25% of duty, if duty is paid within 30 days of passing of such order. The assessee paid duty before issue of show cause notice and Tribunal works out to penalty 25% of duty, which had been upheld by the Hon'ble High Court. In the present case, the Appellant deposited the entire amount of duty before issue of show cause notice. So the penalty is reduced to 25% of duty approximately Rs.60,000.00. Accordingly the, the impugned is modified in so far as penalty is reduced to Rs. 60,000.00. The appeal is disposed of in the above terms.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta