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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/417 /2007-418 /2007 – SM[BR] Date 19/11/2008

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

To :
C.C.E. FARIDABAD

DIVISION-IV, CENTRAL EXCISE
COMMISSIONERATE DELHI IV, FARIDABAD
C.C.E. FARIDABAD Appellant

Vs

M/S MITASO APPLIANCES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1485 – 1486 / 2008- **SM[BR]** dated 17.9.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

1. M/S MITASO APPLIANCES LTD.
2. SH. D.D. BHARDHWAJ, COMMERCIAL MANAGER & AUTHORIZE
PLOT NO 63, SECTOR 6, FARIDABAD,OI

2. Adv. / Consult SHRI R.C. GUPTA ADV.
"AASHIRAD" KOTHI NO. 557, SECTOR -19
FARIDABAD

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 - 3
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
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-1
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 No.417-418 of 2007-SM (BR)

[Arising out of common Order-in-Appeal No.67-68/CE/Appl/DLH-IV/2006 dated 9.10.06 passed by the Commissioner of Central Excise, (Appeals), (M.P.)]

Date of Hearing/ Decision:17.09.2008

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? :

NA

Yes

CCE, Faridabad ....Appellants
[Rep. by Shri S. Gautam, DR]

Vs.

(1) M/s. Mitaso Appliances Ltd.
(2) Shri D.D. Bhardwaj, Commercial Manager ...Respondent
[Rep. by Shri R.C. Gupta, Advocate]

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

Final Order No.1485-1486/08-SM(BR)/Dated:17.09.2008

Per P.K. Das :

The relevant facts of the case, in brief, are that the Respondents are engaged in the manufacture of Gas Stoves and Motor Vehicle Parts classifiable under Chapter 73 and 87 of the Schedule to the Central Excise Tariff Act, 1985. On 9.3.2004, the Central Excise Officers visited the Respondents' factory and recovered handwritten kacha slips /loose sheets of papers showing an account of miscellaneous scraps removed clandestinely. The Respondents immediately deposited the duty of Rs.1,14,414/- on clandestine removal of the goods. The Adjudicating Authority confirmed the demand of duty and appropriated the amount as deposited by the Respondents. He also imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944 along with interest. He also imposed penalty of Rs.10,000/- on the Respondent No.2, Shri D.D. Bhardwaj, the Authorised Signatory of the Respondent No.1. The Commissioner (Appeals) set aside the penalties on the Respondents. Hence, the Revenue filed this appeals.

2. Ld. DR on behalf of the Revenue reiterated the grounds of appeal. He submits that it is an admitted fact of clandestine removal of the goods and penalty of equal amount of duty is required to be imposed. He relied upon the decision of the Hon'ble Delhi High Court in the case of Commissioner of Central Excise Vs. Malbro Appliances P. Ltd. reported in 2007 (208) ELT 503 (Delhi). He relied upon the decision of the Tribunal in the case of Shankeshwar (Tex) India Vs. CCE, Jaipur-II reported in 2008 (223) ELT 532 (Tribunal-Delhi). He further submits that the Commissioner (Appeals) set aside the penalties following the decision of the Larger Bench of the Tribunal in the case of Commissioner of

Central Excise Vs. Machino Montell (I) Ltd. reported in 2004 (168) ELT 466 (T-LB), which has set aside by the Hon'ble Punjab & Haryana High Court.

3. Ld. Advocate on behalf of the Respondents reiterates the findings of the Commissioner (Appeals). He submits that the Tribunal in series of decisions held that if the duty deposited prior to issue of show cause notice after detection of case by the Department, penalty of Section 11 AC of the Central Excise Act, 1944 is not applicable. He relied upon the decision of the Tribunal in the case of Commissioner of Central Excise, Aurangabad Vs. Sun Pharmaceuticals Ltd. reported in 2007 (212) ELT 481 (Tribunal-Mumbai).

4. After hearing both the sides and on perusal of the records, I find that there is no dispute that the Respondents cleared the goods clandestinely. Ld. DR strongly relied upon the decision of the Hon'ble Delhi High Court in the case of Malbro Appliances Ltd. (supra), where it has been held that first proviso to Section 11AC of the Act providing for penalty of 25% if duty demanded paid within 30days of the order. Ld. DR relied upon the decision of the Hon'ble Bombay High Court in the case of CCE Vs. Padmashri V.V. Patil S.S.K.Ltd., in which it was held that Section 11 AC of the Act would be applicable when non payment or short payment due to fraud, collusion,wilful mis-statement, suppression of facts with intent to evade payment of duty, even if duty is paid before issue of show cause notice. The Hon'ble Delhi High Court in the case of K.P.

Pouches (P) Ltd. Vs. Union of India & Anr. reported in 2008 (85) RLT 483 (Delhi) had taken a similar view. I find that the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. (supra) and Malbro Appliances Ltd. (supra) categorically held that if there is a clandestine removal of the goods, Section 11 AC of the Act will be invoked. In view of that, I do not find any force in the submission of the ld. Advocate. As the Respondent No.1 deposited the duty before issue of show cause notice, penalty is reduced to 25% of duty i.e. Rs.28,500/-. Regarding imposition of penalty on Respondent No.2, the ld. Advocate submits that he is authorised Signatory of the Appellant No.1, Company and I do not find any justification for imposition of penalty on the Respondent No.2, who is employee of the Company and, therefore, penalty on the Respondent No.2 is set aside. The appeal against Respondent No.1 is disposed of in the above terms. The appeal against the Respondent No.2 is dismissed.

Order dictated & pronounced in open Court on 17.09.2008.

(P.K. Das)
Member (Judicial)

Ckp.