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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/216 /2007 – SM[BR] Date 25/11/2008

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

To :
C.C.E.KANPUR

117/7, SARVODAYA NAGAR, KANPUR.

C.C.E.KANPUR Appellant

Vs

M/S GANGA ENGINEERING(UJNIT-I) Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1513 / 2008- **SM[BR]** dated 6.10.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

M/S GANGA ENGINEERING(UJNIT-I)

HATHRAS ROAD., RAM BAG, AGRA.
2. Adv. / Consult SHRI K.K.ANAND ADV.
A-5,[BASMENT] 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 - 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)

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

E/Appeal No.216/2007 -SM

(Arising out of order in appeal No.573/CE/Appl/KNP/06 dated 16.11.2006 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?

No.

Yes.

CCE, Kanpur — Appellant (Rep. by Shri R.K. Verma, DR)

Vs

M/s Ganga Engineering — Respondent (Rep. by Shri Hemant Bajaj, Advocate)

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

Date of Hearing: 6.10.08

Final Order No. 1513 /2008-SM(BR)

Per P.K. Das:

After hearing both the sides and on perusal of the record, it is seen that the Central Excise officers visited the respondents factory and detected shortage of inputs. The Authorized Representative of the respondents accepted the shortage and debited the duty. It is stated by the Representative of the respondents that shortage is due to the fact that they have to send Pig Iron, Ferro Silicon & C.I. Castings (Rejected) to job workers factory as they do not have casting facility at their place. Since these items are loaded by uneducated and unskilled labour, it is possible some of these items are not weighed before sending to job workers. The Adjudicating Authority confirmed the demand of duty of Rs.1,01,048/- and appropriated the said amount as deposited by them. He also imposed penalty of equal amount under Rule 25 of Central Excise Rules, 2002. The Commissioner (Appeals) set aside the penalty. Hence the Revenue filed this appeal.

2. On perusal of the record, I find that shortage was detected during stock verification. The respondents deposited the duty upon detection of shortage. There is no material available for clandestine removal of goods. So, the penalty under Section 11AC of the Central Excise Act, 1944 is not warranted. The Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana Vs Omkar Steel Tubes Pvt Ltd reported in 2008 (221) ELT 200 (P&H) held that penalty could be imposable as long as various elements envisages by Section 11AC are satisfied including the presence of mens-era and the appeal filed by the Revenue was dismissed..

3. In view of that, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*