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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/355 /2007 – SM[BR] Date 05/12/2008

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

To :
S & D FABRICS

124-125, NISHANT BAGH COLONY, BHATTIAN BAIT,
JALANDHAR BYE PASS, LUDHIANA.

S & D FABRICS Appellant

Vs

C.C.E, LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1593 / 2008 SM[BR]** dated 23.10.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E, LUDHIANA
   CENTRAL EXCISE HOUSE, F-BLOCK, RISHI NAGAR, LUDHIANA.
2. Adv. / Consult
   MR.G.S.BHANGOO
   631 (FF), SECTOR 11B, CHANDIGARH

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. 355/2007-SM

(Arising out of order in appeal No.110/CE/Appl/Ldh/06 dated 24.11.06 passed by the Commissioner of Central Excise (Appeals),Ludhiana)

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

M/s S & D Fabrics — Appellant
(Rep. by Shri , Advocate)

Vs

CCE, Ludhiana — Respondent
(Rep. by Mr. S.K.Pandey, DR

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

Date of Hearing: 23.10.08

Final Order No. 1593 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that on 31st October 2003, the Central Excise Officers visited the appellants factory and conducted stock verification. The said officers ascertained shortage of finished goods involving Central Excise duty amounting to Rs. 1,83,153/-. Shri Manjit Singh Saini representative of the Appellants in his statement, stated that the goods were removed without payment of Central Excise duty. They have deposited a sum of Rs. 1,87,000/-. The adjudicating authority confirmed the demand of duty of Rs. 1,83,153/- and appropriated the said amount as already deposited by them. He imposed penalty of Rs. 45,788/- under Rule 25 of Central Excise Rules, 2002 read with Section 11 AC of Central Excise Act, 1944 which was also deposited by the appellants. Revenue filed appeal before the Commissioner (Appeals). By the impugned order, the Commissioner (Appeals) enhanced the penalty equal amount of duty under Section 11 AC of the Act. The appellant filed this appeal before the Tribunal.

2. After hearing both the sides and on perusal of the record, it is seen that the appellants deposited the entire amount of duty before issue of show cause notice. The Hon'ble Delhi High Court in the case of CCE Vs. Malbro Appliances Pvt. Ltd reported in 2007 (208) ELT 503 (Del) held that first proviso to Section 11 AC of the Act provided for penalty of 25% of duty if duty demanded paid within 30 days of the order. In the present case, the appellants paid the duty before issue of show cause notice and therefore, penalty is leviable 25% of duty. So, the Adjudicating authority has rightly imposed penalty of Rs. 45,778/- (i.e. 25% of duty).

3. In view of that, the order of the Commissioner (Appeals) is not sustainable. Accordingly, the order of the Commissioner (Appeals) is set aside and the adjudication order is restored. The appeal is allowed.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*