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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/2402/2006-2403/2006-SM[BR] Date 09/04/2008

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

1. M/S SUNDER LAL & SONS
2. SHRI GANGA RAM
340/18, GALI NO. 1, FRIENDS COLONY, SHAHDARA,
DELHI

M/S SUNDER LAL & SONS Appellant

Vs

C.C.E. DELHI II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 589 -590 /2008 –SM[BR] dated 8.2.2008

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. DELHI II

C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

2. Adv. / Consult
MR.KAMALJEET SINGH

J-144, PATEL NAGAR -I,GHAZIABAD.

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Appeal No.E/2402 and 2403 of 2006-SM (BR)

[Arising out of order in appeal No.23-24/CE/DLH/2005 dated 9.5.2005 of the Commissioner of Central Excise (Appeals), Delhi]

Date of Hearing/ Decision:8.2.2008

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.	:	No.
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?	:	

M/s. Sunder Lal & Sons
Shri Ganga Ram ...Appellants
[Rep. by Mr. Kamaljit Singh, Advocate.]

Vs.

CCE, Delhi Respondent
[Rep. by Mr. B.S. Suhag, Authorized Representative (DR)]

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

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Final Order No. 589-590/08-SM(BR)/Dated:8.2.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellant No.1 is engaged in the manufacture of Copper Ingots. The Central Excise Officers on 11.8.2001 intercepted the Tempo loaded with excisable goods cleared from the factory of Appellant No.1 without any central excise invoice. The Adjudicating Authority confiscated the seized goods and imposed redemption fine of Rs.1,00,000/- and also confirmed the demand of duty of Rs.59,200/- and also imposed a penalty of Rs.59,200/- under Section 11 AC of the Central Excise Act, 1944 on Appellant No.1. He also confiscated the Tempo and imposed redemption fine of Rs.30,000/- and penalty of Rs.10,000/- on the driver, Appellant No.2 herein. The Commissioner (Appeals) upheld the adjudication order.

2. Ld. Advocate on behalf of the appellant submits that it is revealed from the record that the invoice of the said consignment of 37nos. of Copper Ingots was not prepared only due to oversight of the dealing clerk and not due to any intention to evade payment of central excise duty and that Appellant No.1 had sufficient balance in PLA & RG-23A (Part-II) to cover up the payment of duty. He submits that the appellant paid the duty upon detection. Therefore, imposition of penalty and the confiscation of the goods

are unjustified. He also submits that Appellant No.2 is Driver and had no knowledge of alleged irregularity.

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that it is a case of clandestine removal of the goods. Therefore, confiscation of the goods and penalty along with interest are absolutely justified.

4. After hearing both the sides and on perusal of the records, I agree with the submissions of the ld. DR. It is revealed from the record that the appellants cleared the goods without payment of duty and without the central excise invoice. Therefore, confiscation of the goods and imposition of redemption fine and penalty are justified. The Hon'ble Delhi High Court in the case of CCE Vs. Malbro Appliances Pvt. Ltd. reported in 2007 (208) ELT 503 (Delhi) held that the imposition of penalty under Section 11 AC of the Central Excise Act, 1944 is discretionary power of the authority. In the said case, the Hon'ble High Court upheld the imposition of penalty of 25% of the duty amount as it was deposited before passing of the adjudication order. The Hon'ble High Court rejected the appeal of the Revenue and held that Ist proviso to Section 11 AC providing penalty of 25% of duty if duty determined paid within 30 days of passing of such order. In the instant case, the appellants have deposited the duty before passing of

the adjudication order. So, the penalty is reduced to Rs.15,000/- (i.e. 25% of the duty). Considering the amount of duty involved in this case, the redemption fine is reduced to Rs.30,000/- (Rupees Thirty Thousand only). There is no material that the Appellant No.2, Driver had any ~~no~~ knowledge of the clandestine removal of the goods and penalty on the appellant no.2 is set aside. The impugned order is modified accordingly.

Order dictated & pronounced in open court on 8.2.08.

(P.K. Das)
Member (Judicial)

Ckp.