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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/6073/2004 - EX[DB] Date 22/01/2009

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

To :
C.C.E.MEERUT-II

SAHEED PARK,NEAR ASHOK KI LAT,DELHI
ROAD,MEERUT U.P
C.C.E.MEERUT-II Appellant

Vs

M/S JALPAC INDIA LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 57/2009- **EX[DB]** dated 15-1-09

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent

M/S JALPAC INDIA LTD.

P.O.MOTAHALDU,HAKDWANI DISTT.NAINITAL U.A - 262402

2. Adv. / Consult SH. B.L. NARASIMHAN, ADV.,
B-6/10, S.J. ENCLAVE,
N. DELHI-29

3 C.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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 6073 of 2004-Ex.

(Arising out of Order-in-Appeal No. 201-CE/MRT-II/2004 dated 30.8.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-II)

CCE, Meerut-II Appellant

Vs.

M/s Jalpac India Ltd. Respondent

Appeared for Appellant : Shri Surendra Shah, DR
Appeared for Respondent : Shri B.L. Narasimhan, Advocate

Date of Hearing: 7.1.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

FINAL Order No......57/09-EX.....dated............

Per D.N. Panda:

Revenue's appeal is against the appellate order passed by ld. Commissioner holding that the adjudication was beyond limitation. For issuance of proper show cause notice and that is not suffering from legal infirmity, proceeding was within limitation. Ld. DR submits that when the appellant preferred to clear goods on execution of bond under provisional assessment the authorities should not have presumed that there was finality of the assessment. Therefore he submits that first appellate order is unsustainable.

2. Ld. counsel Sh. B.L. Narasimhan submits that show-cause notice nowhere states that there was any provisional assessment. He further submits that the ld. appellate authority was right to hold that the proceeding has been barred by limitation. The proceeding although was presumed under Section 11A nothing has been brought in the show-cause notice to show that the present proceeding was made invoking first proviso to Section 11A of the Act. He relies on the judgment of the apex Court in the case of **CCE Vs. Hindustan National Glass & Indus. Ltd.** reported in 2005 (182) ELT 12 and submits that to say any clearance made under provisional assessment there should be an order to that effect. Revenue drew attention to page 56 of the appeal record to prove their stand that there was provisional assessment. But that was repelled by appellant submitting that the same was passed on 15.12.95, whereas the present proceeding relates to April 1995 to December 1995. Therefore he submits that page 56 has no basis for the present proceeding also. He also submits that when a proceeding was initiated by notice without bringing the charge of suppression with intention to evade duty, it is not a notice under Section 11A of Central Excise Act 1944. Therefore, he supports first appellate order and prays to sustain the same without interference.

3. Heard both sides and perused the record.

4. We have extensively examined the materials brought to our notice by both the sides and we are of the view that there was no provisional assessment for the impugned period. This establishes that the assessment has reached to its finality as and when clearance were made. Therefore, to invoke Section 11A, the ingredients of Section 11A should have been brought to the notice of the appellant to meet the civil and criminal consequence of law if any, by the appellant. Such a consequence not being brought to the notice of the appellant, we are of view that first appellate order should sustain without interference. Accordingly, Revenue's appeal is dismissed.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM