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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/2787/2004 – SM [BR] Date 20/01/2009

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

To :
H.N.EXPOLOSIVES PVT.LTD.
4 , LSC , RAM PRATAP HOUSE, KALKJI NEW DELHI

H.N.EXPOLOSIVES PVT.LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 75 / 2009 - **SM[BR]** dated 14.1.2009

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. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/ 1289 -A , VASANT KUNJ NEW DELHI -70.

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
NEW DELHI

COURT NO. II

Excise Appeal No. 2787 of 2004-SM

(Arising out of Order-in-Original No. 8/2004 dated 10.3.2004 passed by the Commissioner, Central Excise, Jaipur)

M/s H.N. Explosives (P) Ltd. — Appellant

Vs.

CCE, Jaipur — Respondent

Appeared for Appellant : Shri Bipin Garg, Advocate
Appeared for Respondent : Shri R.K. Verma, DR

Date of Hearing: 9.1.2009

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

Final Order No. 75/09-SM(BR) dated 14.1.09

Per D.N. Panda:

Ld. counsel Shri Bipin Garg pleads innocence of the appellant submitting that in view of penalty imposed earlier on Shri Ganesh Mathur, Managing Director of the company and that proceeding was dropped by order of adjudication dated 31.10.2000, the proceeding made against present appellant subsequently shall not sustain. He pleads that Rule 173Q of Central Excise Rules 1944 has no provision to impose penalty when the appellant is innocent and that too, when the goods were not received by the buyer. Therefore, he submitted that once there was dropping of penalty on 31.10.2000 as above, penalty by a subsequent order dated 10.3.2004 cannot be imposed on the present appellant. The order dated 10.3.04 was passed consequent upon remand by the Tribunal vide its order dated 16.3.04. He prays that the penalty is deterrent and should not be levied for no causes of the appellant to endanger Revenue. Ld. counsel also raises the issue that the adjudicating authority, Jaipur had no jurisdiction over the appellant therefore the impugned order dated 10.3.04 also suffers from legal infirmity.

2. Ld. DR appearing on behalf of the Revenue supports the order of the authority below.

3. Heard both sides and perused the record.

4. Ld. counsel's grievance is that adjudicating authority had no jurisdiction over the appellant. Since the matter has already travelled a long before various forums, the preliminary issue not raised at any point of time except in the second round of litigation before the adjudicating authority is devoid of merit. Therefore, the appellant fails to succeed on this point.

5. So far as the penalty of Rs.10 lakh levied on the appellant is concerned, it is noticeable from the first order of adjudication against Shri. Ganesh Mathur that Sh. Mathur himself stated before

the Revenue authorities on 16.5.98 that there was no actual sale/dispatch of goods to M/s RECL in respect of invoices No. 230 and 232 both dated 1.8.96. Ld. Authority also found that Shri Mathur has stated that these invoices were issued by one of the employee Shri D.K. Kaushik in connivance with M/s RECL. When these two cogent evidence were available on record, the penalty imposed on the present appellant by a different proceeding is sustainable. Accordingly, appeal of the appellant is dismissed.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM