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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/2194/2005,2288/2005 - EX[DB]   Date 13/02/2009

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

To :
M/S NATIONAL CONDUIT PIPES ⟷ 2. SH.SHAM LAL, PARTNER,
BHAWANIGARH ROAD, SAMANA
M/S NATIONAL CONDUIT PIPES

Appellant
Vs
C.C.E. CHANDIGARH
Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 128-129/2009- **EX[DB]** dated 11-2-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
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. 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)

~~M/S NATIOANL CONDUIT PIPES~~
~~BHAWANIGARH ROAD SAMANA DISTT-PATIALA AND OTHERS~~

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
BENCH - Excise
E/2194 & 2288/05

(Arising out of Order-in-Original No.25-32/CE/2005 dt.9.6.05 passed by Commissioner of Central Exicse, Chandigarh)

M/s. National Conduit Pipes — Appellant

vs

CCE, Chandigarh — Respondent

Coram : Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Appeared for the Appellant : None
Appeared for the Respondent: Shri C.S.Rajput, DR

Date of Hearing: 21.1.09
FINAL Order No. 128-129/09-EX Dt.______

Per D.N.Panda:

None appeared for the appellant. The appellant has filed an appeal before Tribunal on 5.7.05. There was a stay order passed on 28.7.05 directing the appellant to make deposit of Rs.10 lakhs(Rs.ten lakhs) as pre-deposit for hearing the appeal as against demand of Rs.17,79,094/-(Rs.Seventeen lakhs seventy nine thousand ninety four) with equal amount of penalty. Stay was extended from time to time. When the matter was listed for hearing on 2.12.08, grievance of Revenue was that factory of the appellant was closed and the appellant has dismantled its machinery to displace its assets. That shall cause prejudice to the interest of Revenue. If stay is extended, the appellant following dilatory tactice shall deprive Revenue from realizing its legitimate dues. Therefore, appeal may be disposed without further adjournment. Accordingly, the matter was fixed for hearing on 4.12.08. It was directed by the Bench that the appellant shall not transfer its machinery till disposal of appeal. The matter was thus fixed for hearing today directing Registry to list the same at the top of the list of hearing.

2. When the matter was called today, an application dt.19.1.09 was apparent from record stating that the appellant is proposing to engage a Senior Advocate to defend its case for which the appellant prayed adjournment to some other convenient date. It appears that the appellant has abused the process of law and has gone on availing the benefit of stay order dt.28.7.05. In the meantime, more than 3½ years have passed. There is no response from the appellant to cooperate for disposal of appeal. Noticing dilatory tactice adopted by the appellant, we are of the view that the Appellants have abused the process of law. This called for disposal of appeal without further adjournment.

3. We noticed from record that investigation by the Anti Evasion Squad of Revenue revealed that this appellant alongwith other seven concerns named in S.No.1 to 8 at page 102

and 103 of order of Adjudication were controlled by the persons mentioned at S.No. 9 to 17 at page 103 of the said order. Investigation therefore opined that all the eight concerns inclusive of the appellant had common buyers and there were commonality of raw-material seller as well management and control by above person. They were availing SSI exemption benefit as manufacturing unit as separate entities, which is not true. Therefore, all their clearances made by the Appellant called for clubbing since it had availed the SSI exemption unlawfully to the detriment of spirit of SSI benefit granted by respective Notification issued under Central Excise Act,1944. For the abuse of SSI exemption notification, the appellant were brought to charge. Revenue established its case bringing out a close nexus and live link of all the eight concerns and nine persons as exhibited by page 102 and 103 of order of adjudication. This is reflected in para 135 to 138 of order of adjudication. In para 140 the Adjudicating Authority noticed that there is commonality of buyers and suppliers in respect of eight concerns. Raw material was purchased from common seller and finished goods were sold to common buyer and controlled by a common group. The Appellant could not contradict the allegation leading cogent evidence. Therefore Revenue held that clubbing of the clearances was essential and the Appellant was not entitled to SSI exemption.

4. Also clandestine removal was noticed by the department. This aspect was noticed by ld. Adjudicating Authority in para 152 to 155. In para 160 of the order of adjudication, the authority held that the appellant was making unaccounted production for which the same was liable to duty having been evaded. In para 159. the authority found corroborative evidence in support of clandestine removal.

5. We have carefully gone through the allegations against the Appellant, its defence and evidence on record. There is no evidence on record to show that the Appellant is quite independent of others. It has not led any evidence to show that it was not controlled by the group of persons named at page 103 of order of Adjudication. It has also not proved that it was not uninfluenced to make purchase of its raw-materials from others. There is no evidence to show that its sales were beyond control of the group of persons at page 103 of order of adjudication who controlled other 7(seven) units appearing at page 102 of order of adjudication. All these aspects throw light that the Appellant's affairs ~~are~~ were so managed and detriment ~~of~~ to the interest of justice that it should be disentitled to the benefit of exemption of its clearances as SSI. In respect of clandestine removal we found no evidence to come to rescue of Appellant for which finding of Authority below called for no interference.

6. All the aforesaid observations remained untouched in absence of any cogent evidence coming to rescue of the appellant. Therefore, appeal of the appellant is devoid of merit and the adjudication order provides no scope for interference to grant relief to the Appellant.

4. In view of our above observations, we direct dismissal of the appeals today. Both the appeals are accordingly dismissed for non-prosecution as well as on merit.

Order dictated and pronounced in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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