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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/950 /2007 – SM[BR] Date 23/03/2009

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

To :
M/S KHANDELWAL LAMINATES LTD.

B-12/1, SITE IV, SAHIBABAD INDUSTRIAL AREA,
DIST. GHAZIABAD.(U.P)

M/S KHANDELWAL LAMINATES LTD. Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 240 / 2009 –SM[BR] dated 18.3.2009

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. GHAZIABAD

C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302

2. Adv. / Consult SHRI A.L. MALHORA CONSULTANT.
R/O L -54, SECTOR 11, NOIDA [U.P]

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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.950/2007-SM(Br)

(Arising out of order in original No.3/Tech/Commr/Gzb/06 dated 4.12.06 passed by the Commissioner of Central Excise, Ghaziabad)

M/s Khandelwal Laminates Ltd — Appellant

Vs

CCE, Ghaziabad — Respondent

Appeared for Appellant : Shri A.L.Malhora, Consultant
Appeared for Respondent : Shri Sansar Chand, DR

Date of Hearing: 17.3.09

Coram: Hon'ble Mr.D.N. Panda, Judicial Member

Final Order No. 240 /2009 – SM(BR)

Per D.N. Panda:

Learned Counsel Shri A.L. Malhotra submits that this appeal has arisen out of order of the learned Commissioner imposing redemption fine of Rs.25,000/- and duty liability of Rs.34,817/- with equal amount of penalty. He submits that due to short circuit, there was fire and the goods were destroyed which is evident from page 21-22 of the appeal folder and that is report of the Fire Brigade. He therefore, prays that as and when the goods are removed, the appellant shall pay the duty but redemption fine and penalty may be waived.

2. The learned DR opposes the prayer and he supports the order of the adjudicating authority.

3. Heard both the sides and perused the record. The learned Commissioner has noticed that remission application dated 26.7.2004 was in relation to duty amount of Rs.34,817/-. He has also found that the goods were confiscated and kept in the custody in terms of order in original No.42/Gzb/2003 dated 24.12.2003 of Assistant Commissioner, Central Excise, Ghaziabad. He further noticed that the appellant has stated in the remission application that a separate claim in respect of goods received from M/s J.J. Foam (P) Ltd on job work shall be made. Learned Commissioner in para 13 of his order found that the appellant had redeemed the goods lying in the factory and claimed to have been destroyed by fire on 18.6.2004. The redemption fine of Rs.25,000/- was paid on 23.10.2004. The appellant has also deposited duty of Rs.34,817/- alongwith equal amount of penalty. Therefore, the Commissioner has held that there will be no remission of duty on confiscated goods. But in the case of appellant, the remission was claimed on the goods destroyed by fire and on which duty has already been paid. Therefore, remission application filed by the party was held to be infructuous. If the appellant has already paid the redemption fine in respect of the confiscated goods, the appellant should not get any relief, since the confiscation was not challenged; and that is not before this forum. If the duty is payable on the goods lost by fire, the learned Commissioner is required to grant him

if admissible.
appropriate relief. So far as the imposition of penalty is concerned, when there is an observation that it was loss by fire and the appellant has produced the Fire Brigade report appearing at page 20-21, there should be no levy of penalty for no reasons of fire attributable to the appellant.

4. In the result, the appellants gets relief only in respect of penalty imposed but no relief for the redemption fine. However, excise duty if relatable to the goods destroyed in fire, that shall be considered by the learned Commissioner to grant appropriate relief. The appeal is partly allowed and remitted to the learned Commissioner to consider remission of duty, granting fair opportunity of hearing.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*