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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/6078/2004 - EX[DB]   Date 20/05/2009

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

To :
C.C.E.CHANDIGARH
PLOT NO-19,SECTOR 17-C,CHANDIGARH
C.C.E.CHANDIGARH   Appellant
Vs
M/S S.R.FRAGRANCES LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 335/2009-**EX[DB]** dated 20-3-09 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 S.R.FRAGRANCES LTD.
   1KM.STONE,BADDI ROAD,II INDUSTRIAL AREA,
   BAROTIWALA,DISTT SOLAN
2. Adv. / Consult SH. T.R. RUSTAGI, ADV.,
   SD-84, TOWER APARTMENTS
   PITAMPURA, DELHI-34
3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-EXCIS (DB)

Appeal No. E./6078/2004-CE

[Arising out of Order-in-Appeal No.646/CE/CHD/2004 dated 16.09.2004 passed by the Commissioner(A), Central Excise, Chandigarh].

Date of Hearing:20.03.2009
Date of decision:20.03.2009

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
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?	

Commissioner of Central Excise, Chandigarh ...Appellant

Vs.

M/s. S.R. Fragrances Ltd. ... Respondent

Present for the Appellant : Shri S.N. Srivastava, D.R.
Present for the Respondent : Shri T.R.Rastogi, Advocate

Coram: Hon'ble Mr.Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final ~~ORAL~~ ORDER NO. 335/09-EX **DATED: 20.03.2009**

PER: RAKESH KUMAR

This is an appeal filed by the Revenue against order in Appeal No.646/Chd./2004 dated 16.9.2004 passed by CCE (Appeals), Chandigarh setting aside the imposition of penalty under Rule 173Q(1) (a) and interest demand under section 11AB, confirmed by the Jt. Commissioner vide order in Original No.42/JC/CHD/04 dated 16.07.04.

2. Heard both the sides.

2.1 The ld. DR pleaded that since in this case during December 2000 to March 2001 the goods had been cleared by the Respondent to their sister concern on the basis of certain price declared by them while they were required to pay the duty on the basis of 115% cost of production, the penalty has been rightly imposed by joint Commissioner under section 173Q(1) (a), that for imposing penalty under rule 173 Q(1)(a) by the Jt. Commissioner no mens-rea is required and that in this regard he relies upon Tribunal (Larger Bench)'s judgement in the case of CCE, Vapi vs. Modison Ltd. & Anr. Reported in 2006 (76) RLT 656 (Cestat-LB) wherein it was held that for imposition of penalty under rule 173 Q (1) (a) (b) & (c) mens-rea is not an essential ingredient on the issue of interest under section 11AB, he pleaded that since the short payment of duty was due to wilful contravention of the provisions of rules, the interest under section 11AB was chargeable.

2.2. Shri T.R.Rastogi, ld. DR represented for the responded pleaded that the period of dispute i.e. from December 2000 to March 2001, when as per the provisions of section 11AB, as it stood during that period, for charging interest on short paid duty, wilful misstatement, fraud, suppression of fact or wilful contravention of the provisions of Central Excise Rules was required to be proved and that in this case there is no evidence in this regard. As regards penalty under rule 173Q (1)(a), he pleaded that since in this case there was no intention to evade payment of duty and that in any case, whatever duty was required to be paid by the respondent, **if** Cenvat Credit was available to the sister concern, no penalty is imposable and in this regard he placed reliance on Tribunal judgement in the case of Sri Selvakumar Textiles vs. CCE, Coimbatore reported in 2005 (188) E.L.T. 334 (Tri.Chennai). He also pleaded that the Tribunal's judgement in the case of Sri Selvakumar Textiles (supra) is with regard to section 11AC, as in this case the Tribunal held that even if the short payment was due to clandestine removal and the duty was paid after issue of show-cause-notice, penalty is not imposable. In view of the above, he pleaded that there are no grounds to interfere with the impugned order

3. We have carefully considered the submissions from both the sides and perused the records. As far as issue regarding imposition of penalty under rule 173 Q (1) (a) of Central Excise Rules, 1944 is concerned, we find that this is a case where the Respondent were required to pay duty on the goods cleared to their sister concern on the value equal to 115% of the cost of production, but they did not pay duty on this basis, which resulted in short payment of duty and thereby contravention of the provisions of Rule 9 of the Central Excise Rules, 1944. In view of the **above** the Jt. Commissioner has rightly imposed penalty under rule 173 Q (1) (a) of Central Excise Rules specifically observing that penalty under this rule is imposable for contravention of the provisions of Central Excise Rules and it does not depend upon the mens-rea. We also find that the same view has been taken by Larger Bench of this Tribunal in the case of CCE, Vapi vs. Modisons Ltd (supra) which is based on the Hon'ble Supreme Court's judgement in the case of Kriloskar Brothers Ltd. vs. UOI 1988 (34) ELT 30 (Bom.) . In view of this, we hold that penalty

is imposable under rule 173 Q (1) (a) and the impugned order setting aside the penalty is not correct.

4. As regards the interest on short payment of duty under section 11AB, during the period when the short payment **has** taken place, the charging of interest was linked with wilful misstatement, suppression of fact, fraud etc. and we find that in this regard there is no evidence. We therefore, hold that the interest under section 11AB was not chargeable and the impugned order in this regard does not merit interference.

5. In view of our above findings while the impugned order with regard to interest under section 11AB is upheld, the same with regard to penalty is set aside and the penalty imposed by the joint Commissioner's order is restored. The impugned order stands modified as above.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita