TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/1853/2007,1856/2007 – SM[BR] Date 04/05/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S ARIHANT ENGINEERING INDS.
2. D.K. JAIN PARTNER OF M/S ARIHANT ENGINEERING INDS.

PLOT NO. 113, SECTOR 6, FARIDABAD, HARAYANA

M/S ARIHANT ENGINEERING INDS. Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 342 – 343 / 2009 –SM[BR] dated 27.3.2009

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. DELHI IV

NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult
MR.HARPREET SINGH

G-125, PREET VIHAR, DELHI-110092

3 S.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)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATETRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066
Principal Bench.

Date of hearing: 27.03.2009

Excise Appeals Nos.1853 & 1856 of 2007-SM (BR)

(Arising out of Order-in-Appeal No.31 & 32/CE/Appl/DLH-IV/2006 dated 14.3.2007 passed by the Commissioner of Central Excise (Appeals), Faridabad)

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

---

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? No
3. Whether Their Lordships wish to see the fair copy of the Order?
4. Whether Order is to be circulated to the Departmental authorities? Yes

---

(1) M/s. Arihant Engg. Indus. and Ors. Appellant/Applicant
(2) Shri D.K. Jain, Partner (Rep. by Shri Harpreet Singh, Advocate)

Vs.

CCE, Delhi-IV Respondent
(Rep. by Shri S. Gautam, DR)

Coram: Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No. 342-343/09-SM(DR) Dated:27.03.2009

Per: P.K. Das

Heard both sides and perused the records.

2. Appeal No. 1853/07 was filed against demand of duty of Rs.1,53,132 and imposition of penalty of Rs.1,00,000/- on the partnership firm M/s. Arihant Engineering Industries. Appeal No. 1856/07 was filed against penalty of Rs.50,000/- on Shri D.K. Jain, Partner of M/s. Arihant Industries under Rule 26 of the Central Excise Rules, 2002.

3. Ld. Advocate submits that the demand of duty was raised on finished goods on the basis of loose slips and the raw materials were found short during stock verification. He fairly submits that the appellants already deposited the entire amount of duty at the time of search itself and, therefore, he is not contesting the demand of duty. He submits that there is no clandestine removal of goods, imposition of penalty on the partnership firm as well as partner are not sustainable. He relied upon the decisions of the Tribunal as follows:-

(a) Commissioner of Central Excise, Ludhiana Vs. Modern Steel And Agro Industries reported in 2007 (217) ELT 462 (Tribunal-Delhi) and

(b) India Sales International Vs. Commissioner of Customs (Preventive), Kolkata reported in 2008 (229) ELT 555 (Tribunal-Kolkata)

4. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that it is a clear case of clandestine removal of the goods, which has been admitted by the representative of the appellants.

5. After hearing both the sides and on perusal of the records, I find that the representative of the appellants admitted that the goods were cleared without payment of duty and, therefore, it is a clear case of clandestine removal of the goods and penalty is warranted. In any event, the appellants deposited the duty before issue of show cause notice, which is not disputed by them. First proviso of Section 11 AC(i) of Central Excise Act, 1994 provides that if the assessee paid the duty within one month from the date of receipt of Adjudication Order penalty would be 25% of duty.

6. In view of that, the above decision, penalty on Appellant No. 1 is reduced to Rs.38,000/- (i.e. 25% of duty). Regarding imposition of

penalty on the partner, I find that the Tribunal in the case of Modern Steel and Agro Industries held that the penalty imposed on the partnership firm and there is no reason to impose separate penalty on the partner because he is jointly and severally liable with other partners in respect of penalty payable by partnership firm. In view of that, penalty on Shri D.K. Jain Partner Appellant No. 2 is set aside.

7. Appeal No.E/1853 of 2007 is disposed of in the above terms. Appeal No.E/1856 of 2007 is allowed with consequential relief.

(Dictated and pronounced in the open court).

(P.K. Das)
Member (Judicial)

Ckp.