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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

Date 17/06/2009

Appeal No. E/125 /2005 - EX[DB]

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

To :
M/S SIDHATA STEEL TUBES
KHASRA NO 617/245, BISRAKH ROAD,
CHAPARAULA, GHAZIABAD

M/S SIDHATA STEEL TUBES — Appellant
Vs
C.C.E.GHAZIABAD — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 402/2009- **EX[DB]** dated 28-5-09

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.GHAZIABAD
   CGO COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD
   201002
2. Adv. / Consult
   MR.RAJESH CHHIBBER
   FA/9, NEW KAVI NAGAR, GHAZIABAD

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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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.125 of 2005-Excise (BR)

Arising out of Orders-in-Appeal No.171-172/CE/GZB/APPL/04 dated 14.12.2004 passed by the Commissioner of Central Excise (Appeals), Ghaziabad]

Date of Hearing/ Decision:28.05.2009

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see 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

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M/s. Sidhata Steel Tubes .....Appellants
[Rep. by Shri Rajesh Chhiber, Advocate]

Vs.

CCE, Ghaziabad ...Respondent
[Rep. by Shri S.N. Srivastava, DR]

CORAM: **Hon'ble M. Veeraiyan, Member (Technical)**
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No....402/2009-EX.../Dated:28.05.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Pipes and Tubes classifiable under Chapter 73 of the Central Excise Tariff Act, 1984. On 25.09.2001, the Central

Excise Officers visited the appellants' factory and conducted stock verification. The said officers detected shortage of finished goods and raw materials involving central excise duty of Rs.52,712/-. They also verified the records and found that the branded goods to other person were cleared by the appellants at concessional rate of duty under SSI exemption Notification No.9/2001 dated 1.3.22001 instead of full rate of duty. The appellants immediately paid the total duty involving Rs.2,18,274/- in respect of shortage of goods and the goods bearing the brand name of other person. The Original Authority confirmed the demand of duty and appropriated the amount as deposited by them and also imposed penalty of Rs.54,569/-. The appellants filed appeal before the Commissioner (Appeals). Revenue also filed appeal for enhancement of penalty. In the impugned order, Commissioner enhanced penalty to Rs.2,18,274/- (i.e. equal amount of duty). Hence, the appellants filed this appeal.

2. Ld. Advocate submits that the shortage was detected during stock verification and the appellants voluntarily deposited the duty on the shortage. He further submits that the appellants' factory was started during 2001 and due to lack of knowledge, they have cleared the branded goods under the cover of the invoices by paying concessional rate of duty. There is no materials available for clandestine removal of the goods and, therefore, penalty under Section 11 AC of the Central Excise Act, 1944 is not warranted.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the appellants deposited the duty after detection by the Department. He also submits that the appellants failed to give any proper explanation on the shortage of goods and, therefore, the penalty under Section 11 AC of the Act is liable to be invoked.

4. After hearing both the sides and on perusal of the records, we find that the shortage was detected during stock verification. It is noted that the appellants cleared the goods bearing the brand name of other person under the cover of central excise invoice. Ld. Advocate is not disputing the demand of duty, which they have already deposited. There is no materials available for clandestine removal of the goods. Hence, the penalty under Section 11 AC of the Act is not warranted in this case. Accordingly, the demand of duty is upheld. The penalty is set aside. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 28.05.2009.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.