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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/1817/2007 – SM[BR] Date 19/05/2009

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S MAITRI STEELS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 404 / 2009 –SM[BR] dated 28.4.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S MAITRI STEELS LTD.
   19-20, KM. STONE, G.T. ROAD, P.O. MANDHANA, KANPUR
2. Adv. / Consult
   NONE;---------------------

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-1
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 1817 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 105-CE/APPL/KNP/2007 dated 23/03/2007 passed by The Commissioner (Appeals), Customs & Central Excise, Kanpur.]

For Approval and signature :
Hon'ble Shri 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 would 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 Department Authorities? :

CCE, Kanpur — Appellant

Versus

M/s Maitri Steels Ltd. — Respondent

Appearance

Shri S. Gautam, Authorized Representative (DR) – for the appellant.

None – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 28/04/2009.

Final Order No. 404/09-SM(BR) Dated : 28-4-09

Per. Rakesh Kumar :-

This is an appeal by the Revenue against Commissioner (Appeals) order dated 23/03/07 by which the Commissioner (Appeals) while upholding the duty against the Respondent, set aside the order of penalty imposed on them under Section 11AC of the Central Excise Act. The Appellant are a manufacturer of M.S. Strips and CRF Sections. Their factory was visited by the Jurisdictional Central Excise Officers on 09/09/05, in course of which the stock of the finished goods was checked and shortage of 12.070 M.T. of M.S. strips and 10.665 CRF Sections involving duty of Rs. 69,968/- was detected. The duty was paid by the Appellant. Subsequently the show cause notice was issued for confirmation of the duty demand and imposition of penalty on them under Section 11AC. The Deputy Commissioner vide order-in-original dated 12/01/07 confirmed the duty demand and appropriate an amount of Rs. 71,368/- already paid by the Respondent towards this demand. He also imposed a penalty of Rs. 71,368/- on the respondent under Section 11AC. On appeal filed by the Respondent against this order, the Commissioner (Appeals) vide the impugned order-in-appeal dated 23/03/07 while upholding the duty demand set aside the penalty imposed on the Respondent under Section 11AC on the ground that entire duty has been paid by the Respondent even prior to the issue of show cause notice. In this regard, the Commissioner (Appeals) relied upon –

(a) Tribunal's judgment in the case of Machino Montell (I) Ltd. – 2004 (168) E.L.T. 466 (Tri. – LB),

(b) Tribunal's judgment in the case of Rashtriya Ispat Nigam Ltd. vs. CCE – 2003 (116) E.L.T. 285 (T), the Government SLP which has been dismissed by the Hon'ble Supreme Court vide judgment reported in 2004 (163) E.L.T. A58 (S.C.) and

(c) Tribunal's judgment in the case of Gaurav Mercantile Ltd. – 2005 (190) E.L.T. 11 (Bom.).

It is against this order that the present appeal has been filed by the Department challenging the Commissioner (Appeals)'s order setting aside the imposition of penalty on the Respondent under Section 11AC.

2. None appeared for the Respondent. Heard Shri S. Gautam, the learned Departmental Representative who pleaded that the Tribunal's judgment in the case of Machino Montell (I) Ltd. is no longer a good law as the same has been reversed by Hon'ble Punjab & Haryana High Court vide judgment reported in 2006 (4) S.T.R. 177 (P&H). He also emphasized that in this case, the Respondent had clearly admitted that the goods found short had been removed without payment of duty and thus admittedly, this is a case of clandestine removal, therefore, the Section 11AC would be attracted and just because the duty had been paid prior to the issue of show cause notice, the penalty under Section 11AC cannot be waived.

3. I have carefully considered the submissions from the Learned Departmental Representative. From the records, I find that the shortage of finished goods has been admitted by the Respondent and it has also been admitted that goods found short had been removed without payment of duty and without issue of any Central Excise invoices. Thus, the fact of clandestine removal stands established. The Tribunal's judgment in case of Machino Montell (I) Ltd. is no longer a good law as the same has been reversed by Hon'ble Punjab and Haryana High Court in its judgment reported in 2006 (4) S.T.R. 177 (P&H). In view of this,

I hold that the Commissioner (Appeals)'s order setting aside the penalty on the Respondent is not correct. Accordingly, the penalty imposed on the Respondent by the Deputy Commissioner's order is restored. The impugned order stands modified as above. Revenue's appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK