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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 19/06/2009

Appeal No. E/3832/2004,4332/2004 - EX[DB]

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

To :

M/S GANGA SPINNING & WEAVING MILLS LTD., 249
IND. AREA 'A' LUDHIANA.
M/S GANGA SPINNING & WEAVING MILLS LTD.

Appellant
Vs
Respondent

C.C.E. LUDHIANA

I am directed to transmit herewith a certified copy of **Final order No**.410-411/2009- **EX[DB]** dated 8-6-09

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

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent (VIES VARSA)
   C.C.E. LUDHIANA
   COMMISSIONER OF CENTRAL EXCISE, LUDHIANA, CENTRAL EXCISE HOUSE, RISHI NAGAR, LUDHIANA.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 3832 of 2004-Ex.

(Arising out of Order-in-Appeal No.347/CE/Appl/Ldh/2004 dated 19.4.2009 passed by the Commissioner (Appeals), Central Excise, Ludhiana)

M/s Ganga Spinning & Weaving Mills (P) Ltd. Appellant

Vs.

CCE, Ludhiana Respondent

Excise Appeal No. 4332 of 2004-Ex.

(Arising out of Order-in-Appeal No.347/CE/Appl/Ldh/2004 dated 19.4.2009 passed by the Commissioner (Appeals), Central Excise, Ludhiana)

CCE, Ludhiana Appellant

Vs.

M/s Ganga Spinning & Weaving Mills (P) Ltd. Respondent

Appearance

Appeared for Appellant : Shri K.K. Anand with Sh. Hemant Bajaj, Advocates

Appeared for Respondent: Shri, B.S. Suhag, DR

Date of Hearing: 3.6.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final Order No. 410-411/2009-Ex. dated............

Per D.N. Panda :

Ld. DR in Appeal case NO. E/4332/04 has challenged the first Appellate order passed by the ld. Commissioner (Appeals) holding that the rate of duty applicable to the old machinery removed from its factory shall be as that was applicable at the time of acquisition of that machinery by the Appellant. Also the ld. Adjudicating Authority granted concession in the matter of penalty reducing the same to Rs. Two lakhs from Rs.5,04,034/- without any reason. The assessee has also come in cross appeal registered as Appeal Case No. 3832/2004-Ex. The Appellant's contention is that even penalty of Rs. Two lakhs should not have been imposed by the ld. Commissioner (Appeals). Both the parties are only on the dispute as to the applicability of the rate of duty on the date of removal of the goods as that was on that day. Ld. DR reminds us that the contravention of law itself calls for penalty. Ld. DR brings to our notice that Rule 3(4) of sub-rule 4 governs the field. The sub-rule-4 reads as under :-

> "When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under sub-section (2) of Section 3 or Section 4 or Section 4A of the Act, as the case may be, and such removal shall be made under the cover of an invoice."

2. Ld. Counsel Shri Anand submits that the goods having been removed as such what that was on the date of acquisition by the Appellant. The rate applicable to the goods on that day shall apply to the removal subsequently made from the factory of the Appellant.

~~Both sides agree that the goods have not undergone claim of the depreciation under the Cenvat Credit Rules, 2002.~~ None of the parties are in dispute in respect of valuation. The only dispute being rate of duty applicable, we find support from the statutory provision contained in Rule 3 (4) of Cenvat Credit Rules, 2002. There is an obligation on the part of assessee to discharge duty liability at the rate applicable to the goods removed on the date of removal. When express provision of law decides the issue, there is no point to dilate the matter further. Therefore we direct that the rate of duty applicable to the goods removed shall be as that is on the date of removal and nothing else.

3. Both parties are in appeal against penalty. The penalty that has been levied by order of Adjudication was invoking Rule 25 of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944. When we read page 24 of the appeal folder, we are unable to find the essential ingredients of Section 11AC to penalise the assessee. We may state that there was no knowable breach for deliberate defiance of law. Because there is a provision for penalty that cannot be *ipso facto* levied. To say so, we get support of Apex Court's decision in the case of **Hindustan Steel Ltd. Vs. State of Orissa** reported in 1978 (2) ELT (J 159) (SC)and the Apex Court's decision in the case of **State of Madhya Pradesh Vs. Bharat Heavy Electricals** reported in 1998 (99) ELT 33 (SC). We have equally considered the submission of ld. DR that penalty can be levied for contravention of law. But we do not approve the contention of Revenue for the reason that interpretation of word 'such' was in confusion and ambiguity by both the sides. Assesses

found support in its favour relying on the decision of the Tribunal in the case of **Modernova Plastyles Pvt. Ltd. Vs. CCE** reported in 2008 (232) ELT 29. When there is an interpretational ambiguity, it is not proper to resort to a practice which shall defeat the ratio laid down by the apex court in the decision we have cited above.

4. In view of aforesaid decision, we direct the result of appeal of both sides as under :-

1. The assessee succeeds in its appeal so far as the extent of penalty upheld by the ld. first Appellate Authority is concerned and fails on the rate of duty. Therefore penalty is waived. But goods shall be dutiable at the rate applicable on the date of removal.

2. Revenue's Appeal fails in so far as the penalty aspect is concerned.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM