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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

Date 23/06/2009

Appeal No. E/2360/2006,2723/2006 – SM[BR]

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

To :
CCE,KANPUR
117/7,SARVODYA NAGAR KANPUR

Appellant

Vs

CCE,KANPUR

Respondent

M/S SWASTICK TUBES P LTD.

I am directed to transmit herewith a certified copy of **Final order No**. 618 – 619 / 2009 –SM[BR] date12.6.2009

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 SWASTICK TUBES P LTD.
   E-5,INDL AREA,SITE-I,UNNAO
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

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)

2. M/S SWASTICK TUBES PVT LTD
128/9 H-2,KIDWAI NAGAR,
KANPUR-11

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

Excise Appeals Nos.2360 & 2723 of 2006-SM (BR)

[Arising out of common Order-in-Appeal No.141/CE/APPL/KNP/06 dated 14.03.2006 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision12.6.2009

For approval and signature:

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

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

Appeal No.E/2360 of 2006-SM (BR)

M/s. Swastick Tubes Pvt. Ltd. ...Appellant
[Rep. by Shri Atul Gupta, Chartered Accountant]

Vs.

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

Appeal No.E/2723 of 2006-SM (BR)

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

Vs.

M/s. Swastick Tubes Pvt. Ltd. ...Appellant
[Rep. by Shri Atul Gupta, Chartered Accountant]

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

Final Order No. 618-619/09-SM (BR)/Dated:12.06.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the assessee is engaged in the manufacture of PVC Pipes. On 28.01.2003, the Central Excise Officers visited the assessee's factory and conducted stock verification. The stock of finished goods was tallied with that of RG-I Register. There was shortage of raw materials involving central excise duty of Rs.61,600/-. The Representative of the assessee accepted the shortage and deposited the duty on 28.01.2003. The Original Authority confirmed the demand of duty of Rs.61,600/- and appropriated the amount as deposited by them. He also imposed penalty of equal amount of duty under Section 11 AC of the Central Excise Act, 1944. The Commissioner (Appeals) reduced the penalty to Rs.15,000/-. The assessee filed appeal against the order of the Commissioner (Appeals). Revenue filed appeal for imposition of penalty of equal amount of duty.

2. After hearing both the sides and on perusal of the records, it is seen that the shortage of inputs was detected during stock verification. It is recorded in the Adjudication Order that there was no shortage of the finished goods. Shri H.K. Agarwal, Director of the assessee accepted the shortage but failed to explain the reasons for the shortage. The contention of the ld. DR is that the assessee failed to reason for shortage, it is presumed that the goods were cleared clandestinely.

3. Ld. Advocate on behalf of the assessee submits that the Hon'ble

Punjab & Haryana High Court in the case of Commissioner of Central Excise , Ludhiana Vs. Omkar Steel Tubes Pvt. Ltd. Reported in 2008 (221) ELT 200 (P&H) held that duty has been paid before issue of show cause notice would not result into inapplication of Section 11 AC and penalty would still be imposed as long as various elements envisaged by Section 11 AC are satisfied including presence of mens rea. It is seen that in the said case, the assessee failed to explain the reasons for shortage. The Adjudicating Authority imposed penalty of equal amount of duty, which was set aside by the Tribunal and upheld by the Hon'ble High Court in the said decision.

4. In the present case, the assessee failed to furnish reasons for shortage. There is no material available of clandestine removal of the goods. So, imposition of penalty under Section 11 AC of the Act is not justified.

5. Accordingly, the demand of duty is upheld and penalty is set aside. The appal filed by the assessee is disposed of in the above terms. The appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 12.06.2009.

(P.K. Das)
Member (Judicial)

ckp.