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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/2368/2006 – SM[BR] Date 07/07/2009

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

To :
CCE;KANPUR

117/7,SARVODYA NAGAR KANPUR

CCE,KANPUR Appellant

Vs

M/S SWASTICK TUBES P LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 660 / 2009-SM[BR]** dated 12.6.2009

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 ATUL GUPTA C.A.
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
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Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.2368 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.113-114-CE/APPL./KNP/2006 dated 8.3.2006 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? :
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

No.

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

Vs.

M/s.Swastick Tubes P.Ltd. ...Respondent
[Rep. by Shri A. Gupta, Chartered Accountant]

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

Final Order No. 660/2009 SM (BR) /Dated:12.06.2009

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby penalty was reduced.

2. The relevant facts of the case, in brief, are that the respondent is engaged in the manufacture of PVC Pipes. On 5.6.2004, the Central

Excise Officers visited the respondent's factory and conducted stock verification. The Central Excise Officers detected shortage of finished goods involving central excise duty of Rs.1,50,474/-. The Director of the respondent accepted the shortage and deposited the duty on 21.06.2004. The Original Authority confirmed the demand of duty of Rs.1,50,474/- and appropriated amount deposited by them and imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944. The Commissioner (Appeals) reduced penalty to Rs.40,000/-. The Revenue filed this appeal against the respondent for enhancement of penalty of equal amount of duty.

3. After hearing both the sides and on perusal of the records, it is seen that the Director of the respondent-company in his statement stated that the finished goods have been removed from the factory in his absence without accountal and without payment of central excise duty due thereon. It is seen that the goods were cleared clandestinely and, therefore, imposition of penalty under Section 11 AC is warranted.

4. Ld. DR submits that the same assessee in earlier occasion, in the month of January, 2003 during stock verification, found shortage of inputs. He submits that the respondent is a habitual offender and, therefore, penalty of equal amount of duty is imposable.

5. Ld. Counsel on behalf of the respondent submits that there is no evidence of clandestine removal of the goods. The Director of the Company stated that the goods might have removed from the factory in

his absence. Thus, there is no material available of clandestine removal of the goods. He also submits that the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. Vs. Union of India &Anr. reported in 2008 (85) RLT 483 (Delhi) held that where entire duty is paid before issue of show cause notice, penalty equal to 25% of duty is leviable. He submits that the Commissioner (Appeals) rightly reduced the penalty to Rs.40,000/-, which is 25% of duty.

5. I find that the goods were cleared without payment of duty. It is a case of clandestine removal of the goods and penalty under Section 11 AC of the Act is imposable. Ist Proviso to Section 11 AC of the Central Excise Act, 1944 provides that if the assessee deposited the duty within 30 days from the date of receipt of the Adjudication Order, penalty would be reduced to 25% of duty. In the present case, I find that the Original Authority imposed penalty of equal amount of duty even the assessee deposited the duty before issue of show cause notice. Hence, the Commissioner (Appeals) rightly reduced the penalty to 25% of duty.

6. In view of the above discussions, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated and pronounced in open court on 12.06.2009.

(P.K. Das)
Member (Judicial)

ckp.