

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 08/07/2009

Appeal No. E/2240/2007 - SM[BR]

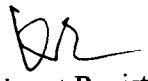
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. ROHTAK
SCO NO,6 SECTOR 1, ROHTAK.
C.C.E. ROHTAK

Appellant
Vs
Respondent

M/S HARYANA CONDUCTORS PVT LTD

I am directed to transmit herewith a certified copy of **Final order No. 663 / 2009 -SM[BR]** dated 25.6.2009
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 HARYANA CONDUCTORS PVT LTD
7 TH MILE STONE, G.T. ROAD, PIAO MANIYARI, KUNDLI, DISTT-SONEPAT(HR)
2. Adv. / Consult SHRI V.R. SETHI ADV.
M/S RESPONDENT;-----
- 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 Publications 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 Kuni, New Delhi - 110070
- 13 Taxmann Allied Service Pvt Ltd., 21/35, West Puniabi 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 (Harvana)
- 16 Office Copy
- 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. 2240 of 2007 (SM)**

[Arising out of the Order-in-Appeal No. 306-307/SSS/RTK/2007 dated 30/05/2007 passed by The Commissioner of Central Excise (Appeals), Delhi – III, Gurgaon.]

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, Rohtak Appellant

Versus

M/s Haryana Conductors Pvt. Ltd. Respondent

Appearance

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

Shri V.R. Sethi, Advocate – for the Respondent.

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

DATE OF HEARING : 25/06/2009.

final Order No. 663 / 2009 *SM (Br)* Dated : _____

Per. Rakesh Kumar :-

This is the appeal by the Revenue against order-in-appeal No. 306-307/SSS/RTK/2007 dated 30/05/07 passed by CCE (Appeals), Gurgaon by which penalty on the respondent imposed by the Assistant Commissioner under Section 11AC was reduced to 25% of the amount of penalty.

2. The facts giving rise to this appeal are in brief as under:-

2.1 The respondent are engaged in the manufacture of AAC, AAAC & ACSR conductors chargeable to Central Excise Duty under Chapter 76 of the schedule to Central Excise Tariff Act, 1985. The raw material for the finished goods of the respondent is Aluminium Wire Rod & Steel Wire Rod. On 21/01/06, the Central Excise Officers visited the factory premises and checked the stock of finished goods as well as raw material. While no discrepancy was found in the stock of the finished goods, the shortage of 7.150 MT of Steel Wire

and 1.950 MT of Aluminium Wire Rod involving Central Excise Duty of Rs. 76,775/- of which Cenvat credit had been taken was found. The Respondent could not give any satisfactory explanation at that time and the entire amount was deposited vide PLA debit entry No. 18 dated 2/2/06. Thereafter a show cause notice was issued for confirming the demand for the above-mentioned duty and imposition of penalty on the Respondent under Section 11AC. The Assistant Commissioner vide order-in-original dated 5/10/06 confirmed the duty demand and ordered appropriation of the amount earlier paid by them vide PLA debit entry No. 18 dated 2/2/06 and beside this imposed penalty of Rs. 76,775/- on the Respondent's company under Section 11AC of Central Excise Act, 1944 and penalty of Rs. 5,000/- on Shri Abhijay Jain, Director of the Respondent's company. On appeal against this order, the Commissioner (Appeals) by the impugned order-in-appeal, while setting aside the penalty ^{on} Shri Abhijay Jain, ^{on the Respondent company} reduced the penalty to 25% on the ground that the Respondent company had paid the duty before the issue of show cause notice and, therefore, the benefit of 1st Proviso to Section 11AC would be applicable. The Revenue has filed

this appeal challenging the reduction of penalty on the Respondent company.

3. Heard both the sides.

3.1 Shri S.N. Srivastava, the learned Departmental Representative reiterated the grounds of appeal and pleaded that the Commissioner (Appeals)'s order reducing the penalty is not correct. He emphasized that the benefit of 1st and 2nd proviso to Section 11AC is available only if the amount of duty together with interest and 25% of duty amount as penalty is paid within 30 days of the order of the original, while in this case penalty equal to 25% of the demand confirmed has not been paid within the stipulated period and was paid only on 17/1/2000 and thus the conditions for availing the concession of penalty under 1st and 2nd proviso to Section 11AC are not satisfied.

3.2 Shri V.R. Sethi, Advocate, the learned Counsel for the Respondent pleaded that in this case, the duty had been paid much before the issue of show cause notice and since only a few days after the shortage of the Cenvated input was pointed out, the duty had been paid, no interest was payable. In fact

interest has not been demanded. In the circumstances of the case, the entire amount of duty stands paid by the respondent even before the issue of show cause notice, but in spite of this, the Assistant Commissioner while adjudicating this matter imposed penalty equal to the duty demand confirmed without giving an option to the Respondent to pay 25% of the duty demand as penalty within period of 30 days of the adjudication order. He pleaded that in view of these circumstances, the judgment of Hon'ble Delhi High Court in the case of **K.P. Pouches (P) Ltd. vs. UOI** reported in **2008 (228) ELT 31 (Del.)** and also the judgment of Hon'ble Punjab & Haryana High Court in the case of **CCE, Rohtak vs. J.R. Fabrics (P) Ltd.** reported in **2009 (238) E.L.T. 209 (P&H)** would be applicable and hence the Respondent would be eligible for the concession and penalty available under 1st proviso to Section 11AC.

4. I have carefully considered the submissions from both the sides and perused the records. There is no doubt about the fact that the entire duty on the cenvated input found short had been paid and only a few days after the shortage was pointed out and as such no interest is payable. I also find that in view

of these circumstances, the Assistant Commissioner while issuing the adjudication order should have extended the option to pay 25% penalty under 1st proviso to Section 11AC within 30 days from the date of issue of the adjudication order. But no option was extended and penalty equal to amount of duty demand confirmed was imposed under Section 11AC. In view of these circumstances, I hold that the ratio of Hon'ble Delhi High Court judgment in the case of K.P. Pouches (P) Ltd. vs. UOI (supra) and the judgment of Hon'ble Punjab & Haryana High Court in the case of CCE, Rohtak vs. J.R. Fabrics (P) Ltd. (supra) would be applicable. In view of this, I do not find any infirmity in the impugned order. The Revenue's appeal is dismissed.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

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