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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/2329/2007 – SM[BR]   Date 06/08/2009

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

To :
C.C.E. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ,
PHASE V, GURGAON - 122016 (HARYANA)
C.C.E. DELHI III   Appellant

Vs

M/S REPRO AUTO PVT. LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 878 / 2009 –SM[BR] dated 23.7.2009

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 REPRO AUTO PVT. LTD.

PLOT NO 61, SECTOR-3(NOW PLOT NO 62, SECTOR 5) IMT, MANESAR, GURGAON
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-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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 2329 OF 2007-SM

[Arising out of Order-in-Appeal No. 277/SSS/GGN/2007 dated 18.5.2007 passed by the Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon]

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
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 Departmental authorities?	yes

CCE, Delhi-III — Appellant

Vs.

M/s. Repro Auto (P) Ltd., — Respondents

Appearance:

Shri S.N. Srivastava, SDR for the Revenue;
None for the respondents

Coram:

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

Date of hearing/decision: 23rd July, 2009

FINAL ORDER NO. 878/2009 SM (BR) **dated** ________

Per P.K. Das:

Revenue filed this appeal against order of the Commissioner (Appeals) whereby penalty of equal amount of duty imposed under Rule 25 of Central Excise Rules was set aside.

2. After hearing learned D.R. and on perusal of the records, it is seen that the respondents are engaged in the manufacture of motor vehicle auto parts classifiable under Tariff heading 8708.00 of the Schedule to the Central Excise Tariff Act, 1985. During the month of January, 2005 to October, 2005 the respondents cleared waste and scrap generated during the manufacture of the said product at nil rate of duty under Sub-heading 7204.21. A show cause notice was issued proposing to classify the said product under Sub-heading 7204.29/7204.90 instead of 7204.21 as claimed by the respondents. The respondents deposited the entire amount of duty. The original authority classified the waste and scrap under 7204.29/7204.90 attracting central excise duty. He also confirmed the demand of duty of Rs. 4,55,576/- and appropriated the amount as deposited by them. He also demanded interest and imposed penalty of equal amount under Rule 25 of Central Excise Rules. The Commissioner (Appeals) set aside the penalty. Hence, Revenue filed this appeal.

3. The main contention of the learned D.R. is that the respondents have not debited the duty voluntarily. He submits that the department

during scrutiny of the records of ER-I monthly return detected that the respondents cleared the goods at nil rate of duty. Therefore, it is a clear case of removal of goods with intention to evade payment of duty. So, penalty of equal amount of duty as imposed by the original authority is justified.

4. I find from the adjudication order that it was contended by the respondents that at the time of seeking their registration the respondents declared waste and scrap under Sub-heading 7204.21 at nil rate of duty. Thus, the allegation of clearance of goods with intention to evade payment of duty at nil rate, cannot be accepted. I find that the original authority observed that the respondents cleared the goods wrongly classifying the goods under Sub-heading 7204.21. It is a dispute of classification of goods. Now, the respondent is not disputing the duty. Hence, the Commissioner (Appeals) rightly set aside the penalty.

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

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK