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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/1 / 2007 , 253 / 2007 -SM[BR] Date 26/08/2009

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

To :

M/S JAI PARVATI FORGE PVT LTD
VILLAGE- BHAGWANPUR, BARWALA ROAD,
DERABASSI, DISTT- PATIALA
M/S JAI PARVATI FORGE PVT LTD Appellant

Vs

C.C.E.CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1066 – 1067 / 2009 -SM[BR] dated 11.8.2009

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
MR.JOY KUMAR
FLAT NO 261/1,SEC 45-A,CHANDIGARH.
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

3. M/S JAI PARVATI FORGE PVT LTD
VILL. BHAGWANPUR, BARWALA ROAD, DERABASSI

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeals Nos.01 and 253 of 2007-SM (BR)

[Arising out of common Order-in-Appeal No.1006 & 1007/CE/CHD/06 dated 24.10.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:11.08.2009

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

Excise Appeal No.01/2007-SM (BR)

M/s. Jai Parvati Forge (P) Ltd. ...Appellants

(Rep. by None.)

Vs.

CCE, Chandigarh .....Respondent

(Rep. by Shri R.K. Saini, SDR)

Excise Appeal No.E/253/2007-SM (BR)

CCE, Chandigarh ...Appellants

Vs.

M/s. Jai Parvati Forge (P) Ltd. ...Respondent

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

Final Order No. 1066-1067/2009 SM (BR) /Dated:11.08.2009

Per P.K. Das:

Heard ld. DR on behalf of the Revenue. None appears on behalf of the assessee.

2. The relevant facts of the case, in brief, are that the Original Authority confirmed the demand of Rs.1,02,480/- and appropriated the said amount as deposited by the assessee. He also imposed equal amount of penalty under Section 11 AC of the Central Excise Act, 1944 along with interest. The Commissioner (Appeals) set aside the penalty as the assessee deposited the duty before issue of show cause notice. Revenue filed this appeal against setting aside of penalty. The assessee filed this appeal against demand of duty.

3. After hearing ld. DR and on perusal of the records, I find that the Commissioner (Appeals) set aside the penalty as the assessee already deposited the duty before issue of show cause notice following the Larger Bench decision of the Tribunal in the case of CCE Vs. Machino Montell Pvt. Ltd. reported in 2004 (62) RLT 709. Ld. DR submits that the Larger Bench decision of the Tribunal has already been set aside by the Hon'ble Punjab & Haryana High Court. I find that it is well settled that the penalty imposed under Section 11 AC of the Act cannot be set aside merely on the ground that the duty deposited before issue of the show cause notice. Penalty can be imposed under Section 11 AC of the Act if the ingredients, as mentioned in the said Section, are satisfied. It is seen that the Commissioner (Appeals) set aside the penalty without going into the merits of the case.

4. In view of the above, the impugned order passed by the Commissioner (Appeals) is set aside. The matter is sent back to the

Commissioner (Appeals) to decide afresh. Both the appeals are allowed by way of remand.

Order dictated & pronounced in open court on 11.08.2009.

(P.K. Das)
Member (Judicial)

Ckp.