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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/509 /2008 – SM[BR] Date 18/01/2010

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

To :
C.C.E. MEERUT I

EXCISE CHOWK, UNIVERSITY ROAD, MANGAL
PANDEY NAGAR, MEERUT - 250005.

C.C.E. MEERUT I Appellant

Vs

M/S GUPTA TRANSFORMAR PRODUCTS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 86 / 2010 –SM[BR] dated 13.1.2010 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 GUPTA TRANSFORMAR PRODUCTS

   MEERUT ROAD,MUZAFFARNAGAR

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 509 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 251-251A-/CE/MRT-I/2007 dated 28.12.2007 passed by Commissioner of Central Excise (Appeals), Meerut I]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, 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? : Yes
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? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

Commissioner of Central Excise Meerut I — Appellants

Vs.

M/s. Gupta Transformer Products — Respondent

Appearance:

Shri S.K. Saxsena, Jt.CDR for the Appellants
None for the Respondent

Date of Hearing/decision : 13.1.2010

ORAL ORDER NO. 86/2010 SM BR

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 251-251A-/CE/MRT-I/2007 dated 28.12.2007.

2. Heard the learned Jt. CDR. None appeared for the respondents inspite of notice.

3. Original authority on a finding of clandestine removal of excisable goods by the respondents confirmed a demand of duty of Rs.76,013/- along with interest and imposed equal amount of penalty under section 11AC of the Central Excise Act, 1944; in addition, he imposed a penalty of Rs.76,013/- on Shri Rajeev Gupta, partner of the respondents firm. On appeal by the parties, Commissioner (Appeals) upheld the charge of clandestine removal and confirmed the duty demand to the tune of Rs.35,213/-. She set aside the separate penalty on the partner. She also reduced the penalty imposed under Section 11AC from Rs.76,013/- to Rs.10,000/- on the ground that the respondents have paid the duty involved on clandestine removal of goods before issue of show cause notice.

4. Learned Jt. CDR submits that the duty demanded on clandestine removal to the tune of Rs.35,213/- having been upheld, the Commissioner (Appeals) should have upheld the penalty of Rs.35,213/- under section 11AC as there is no discretion for reducing the penalty under section 11AC as held by the Hon'ble Supreme Court in Union of India vs. Dharmendra Textiles [2008 (231) ELT 3(SC)].

5. I have carefully considered the submissions. As Commissioner (Appeals) has upheld the charge of clandestine removal, I agree that the penalty should have been equal to the duty and accordingly the penalty requires to be Rs.35,213/- under Section 11AC.

6. In view of the above, the order of Commissioner in reducing the penalty is set aside and the same is modified as Rs.35,213/- [Rupees Thirty-five thousand two hundred and thirteen only) under section 11AC.

7. The appeal is disposed of as above.

(M. Veeraiyan)
Member(Technical)

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