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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/2597/2007 – SM[BR] E / CO / 22 / 2008 –SM[BR] Date 25/11/2009

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant

Vs

M/S VARANASI JUTE BAG INDUSTRY (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1466 / 2009 –SM[BR] dated 7.10.2009 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 VARANASI JUTE BAG INDUSTRY (P) LTD.
   E-=9, INDUSTRIAL AREA, RAM NAGAR, CHANDAULI (UP)
2. Adv. / Consult SHRI BIPIN GARG ADV.
   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
17 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeals Nos.2597 of 2007-SM (BR) and
E/CO/22/08-SM (BR)

(Arising out of Order-in-Appeal No.63-CE/ALLD/2007 dated 28.03.2007 passed by the Commissioner of Central Excise (Appeals), Allahabad).

Date of Hearing/ Decision:7.10.2009

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

CCE, Allahabad ...Appellants
(Rep. by Shri S.L. Kumar, SDR)

Vs.

M/s. Varanasi Jute Bag Indus. (P) Ltd. ...Respondent
(Rep. by Shri Atul Gupta, Chartered Accountant)

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

Final Order No. 1466/2009 SM(BR)/Dated: 7.10.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants were engaged in the manufacture of P.P. Woven Fabrics and woven sacks falling under Heading No.3993.90 and 3926.90 of the Schedule to the

Central Excise Tariff Act, 1985. A show cause notice dated 4.4.2006 was issued proposing demand of duty for the period 2000-2001 and 2001-2002 of Rs.1,13,603/- and for imposition of penalty under Section 11 AC of the Central Excise Act, 1944. The Original Authority confirmed demand of duty of Rs.1,13,603/- along with interest and also appropriated the amount as deposited by them. He also imposed penalty of equal amount under Section 11 AC of the Act. The Commissioner (Appeals) modified the adjudication order in so far as penalty reduced to Rs.25,000/-. The Revenue filed appeal against reduction of penalty. The assessee filed cross objection against the duty and penalty of Rs.25,000/-.

2. Ld. DR on behalf of the Revenue reiterates the grounds of appeal filed by the Revenue. He submits that in view of the decision of the Hon'ble Supreme Court in the case of Dharamendra Textile Processors 2008 (231) ELT 3 (SC), there is no scope for reduction of penalty imposed under Section 11 AC. Regarding the cross objection filed by the assessee, he submits that the appellants paid duty in the year 2002, which was appropriated by them and, therefore, they can not raise the dispute against demand of duty at this stage. He further submits that the appellants realised excess amount on loading and unloading charges, which was detected by the Central Excise Officers. He submits that it is a case of suppression of facts with intention to evade payment of duty and imposition of penalty under Section 11 AC of the Act is justified.

3. Ld. Counsel on behalf of the assessee submits that the show cause notices dated 4.4.2006 was issued for the period 2000-2001 and 2001-2002 is partly beyond the 5 years and, therefore, demand of duty is barred by limitation. So, the demand of duty and imposition of penalty are liable to be set aside. He further submits that the amounts of Rs.5,380/- and Rs.2,556/- for the period 200-2001 and 2001-2002 are in respect of excess amount on loading and unloading charges, which were paid by them on 10.10.2002 along with interest on 26.09.2005. He also submits that the amount of Rs.21,914/- and Rs.80,839/- for the period 2000-2001

and 2001-2002 respectively are related to availment of 100% credit on capital goods, out of which 50% they have not utilised for the same financial year. Even then, they have paid the entire amount with interest on 12.07.2002. Thus, there is no suppression of facts with intent to evade payment of duty and entire amount of demand of duty are barred by limitation. No penal provisions can be invoked.

4. After hearing both the sides and on perusal of the records, I find that the appellant paid the duty of Rs.5,280/- and Rs.2,556/- on 10.10.2002 and Rs.21,914/- and Rs.80,839/- along with interest were paid on 12.07.2002. Original Authority appropriated the said amount as deposited by them. Hence, the assessee can not contest the duty deposited by them at this stage.

5. Regarding imposition of penalty under Section 11 AC of the Act, the contention of the ld. Counsel on behalf of the assessee is that the amount of Rs.21,914/- and Rs.80,839/- are in connection with availment of credit on 100% capital goods. On perusal of the impugned order of the Commissioner (Appeals), I find that these facts were not considered. It is also contended by the assessee that the demand of duty is barred by limitation and, therefore, Section 11 AC cannot be invoked, which has also not been discussed. I have already observed that the assessee deposited the duty in the year 2002, which was appropriated and cannot be disputed by the assessee in the present proceedings. However, imposition of penalty under Section 11 AC of the Act is required to be examined after verification of the ingredients as envisaged in the said Section.

6. In my view, the Commissioner (Appeal) have not considered the facts of the case in details. As such, the impugned order of the Commissioner (Appeals) in so far as imposition of penalty is set aside. The matter is remanded back to the Commissioner (Appeals) to decide afresh the imposition of penalty under Section 11 AC of the Act after considering the submission of both the sides. All the issues in respect of

imposition of penalty are left open for decision before the Commissioner (Appeals). Needless to say that the Commissioner (Appeals) shall give reasonable opportunity of hearing before decision. The appeal filed by the Revenue and the cross objection filed by the assessee are allowed by way of remand with the above directions.

Order dictated and pronounced in open court on 7.10.2009.

(P.K. Das)
Member (Judicial)

Ckp.