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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

Date 02/12/2009

Appeal No. E/3011/2007 -SM[BR]

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
Appellant

C.C.E. INDORE
Vs
Respondent

M/S MAGADH PRECISION EQUIPMENTS LTD.

I am directed to transmit herewith a certified copy of **Final order No.** 1479 / 2009 -SM[BR] dated 24.11.2009 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 MAGADH PRECISION EQUIPMENTS LTD.
   (FORMERLY M/S MAGADH STEEL INDUSTRIES (P) LTD.) 11-12, INDUSTRIAL ARREA NO.2, A.B.ROAD, DEWAS
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

Customs Appeal No. 3011 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. IND-I/150/2007 dated 9.8.2007 passed by Commissioner of Customs & Central Excise, Indore]

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?	:	Yes
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 Customs & Central Excise, Indore — Appellants

Vs.

M/s. Magadh Precision Equipments Ltd. — Respondent

Appearance:

Shri Anil Khanna, SDR for the Appellants
None for the Respondent

Date of Hearing/decision : 24.11.2009

ORAL ORDER NO. 1479/2009 SM(BR)

Per M. Veeraiyan:

This is an appeal by the department against the order of the Commissioner (Appeals) dated 9.8.2007.

2. None appears for the respondent inspite of notice. Heard the learned DR.

3. The relevant facts, in brief, are that the respondents have two units one at 11-12, Industrial Area No. 2, A B Road, Dewas, (Unit No. 1) and another at 76, Industrial Area No. 3, AB Road, Dewas (Unit No. 2). When the officers visited the factory premises of Unit 1 on 24.1.03, they found that the parts of pickling line machine: 2 Nos. DC Uncoiler, 1 No. Logo Marker and 1 No. Coil car, total valued at Rs.11,50,000/- involving duty of Rs.1,84,000/- were found short of the recorded balance shown in the daily stock Register. It was explained that the said goods were taken to unit No. 2 for the purpose of painting, packing under returnable challan Nos. 7 dated 31.12.2002 and 9 dated 21.1.2003. It was also explained that the said goods were meant for export and the unit No. 1 was not having suitable size crane for loading the consignment. The original authority held that the goods have been cleared from Unit No.1 to Unit No. 2 without an invoice and confiscated the goods but allowed the same to be redeemed on payment of fine of Rs.3 lakhs. He also imposed a penalty of Rs. 1,84,000/- under Rule 25; and a penalty of Rs.2,72,629/- under Rule 13(1) for violation of

provisions of Rule 4(5) of Cenvat Credit Rules, 2002 on Unit No.1. In addition, he imposed a separate penalty of Rs.1,84,000/- on the second unit. Commissioner (Appeals) in pursuance of remand order of the Tribunal dated 2.3.2007, upheld the confiscation of the goods and also upheld the liability for penalty. Further, holding that the case did not involve suppression of facts or mis-declaration with intention to evade duty, reduced the redemption fine from Rs.3 lakh to Rs. 5,000/-, reduced the penalty of Rs.1,84,000/- to Rs.10,000/- under Rule 25 and set aside the penalty of Rs.2,72,629/-. He also set aside the penalty of Rs.1,84,000/- imposed on second unit.

4. Learned DR reiterates the findings of the original authority and the grounds of appeal and seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of original authority. It was submitted that Rule 10(1) of Central Excise Rules, 2002 stands violated as the respondents have not maintained proper records on daily basis. It was also canvassed that respondent No. 1 and 2 are separate entities having separate central excise registrations and, therefore, separate penalty on unit No.2 was also justified. It has also been contended that the case laws relied upon by the Commissioner related to condonation of technical lapses and in the instant case the respondents have failed to observe the provisions of basic law. The grounds of appeal also mentions that as the goods have already been exported to China and Ethiopia, no duty was demanded.

5. I have carefully considered the submissions and perused the records. At the outset, it is noticed that the case involves transfer of finished goods

from one unit to other unit of the same manufacturer. Merely because they had two premises and two different excise licences, they could not be treated as two separate legal entities as claimed by the department. The impugned goods have been admittedly entered in the daily stock register of unit No. 1. The goods have been removed under returnable challans issued by Unit No. 1 and sent to Unit No.2. The allegation in the show cause notice and finding of the original authority was to the effect that the said clearance under delivery challans have not been entered in the daily stock register of Unit No. I. The Commissioner has come to the conclusion that it is a case of improper maintenance of accounts but there is no intention to evade excise duty. The grounds of appeal clearly indicate that the goods have been exported to China and Ethiopia. This is in conformity of claim of respondents at the time of visit of the officers that the goods were sent to Unit No.2 for the purpose of painting, packing and loading for export purpose. Under these circumstances, the leniency showed by the Commissioner (Appeals) for reducing the redemption fine and reducing the penalty under Rule 25 are fully justified. No evidence has been produced to contradict the finding of the Commissioner (Appeals) that there was no intention to evade payment of duty. Infact, no duty stands demanded. As already mentioned unit No. 2 is not a separate legal entity and in the facts and circumstances of the case, no penalty was warranted on the second unit. In view of the above, the order of the Commissioner (Appeals) in setting aside the penalty on unit 2 cannot be found fault with.

6. In view of above, I hold that no valid grounds have been adduced to interfere with the order of the Commissioner (Appeals).

7. The appeal of the department is, therefore, rejected.

(M. Veeraiyan)
Member(Technical)

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