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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/1990/2007 – SM[BR] Date 20/10/2009

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

To :
M/S SHERATON RAJPUTANA
SHERATON RAJUTANA, JAIPUR

M/S SHERATON RAJPUTANA Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1282 / 2009 –SM[BR] dated 27.8.2009 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. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.KAPIL KHER
F-256, NEW RAJINDER NAGAR, NEW DELHI-110060
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)
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Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.1990 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.80 and 81(GRM)CE/JPR-I/2007 dated 03.04.2007 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:27.08.2009

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.		No.
2. Whether it should 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.

M/s. Sheraton Rajputana .....Appellants
(Rep. by Shri A.Kumar Kher/Shri V. Kapil Kher, Advocates)

Vs.

CCE, Jaipur ....Respondents
(Rep. by Shri S.Gautam, SDR)

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

Final Order No. 1282/2009 SM (BR) /Dated:27.08.2009

Per P.K. Das:

The appellant filed this appeal against imposition of penalty of Rs.50,000/-.

2. The relevant facts of the case, in brief, are that M/s Interscape is engaged in the manufacture of wooden furnitures. They entered into an agreement with the appellant-company for the manufacture of different items of furnitures at site as per terms and conditions set out in the agreement. During investigation, it was revealed that M/s Interscape had not paid duty on the furnitures supplied to the appellant. The Original authority confirmed the demand of duty of Rs. 8,56,497/- with interest and imposed penalty of equal amount on M/s Interscape and also imposed penalty of Rs. 50,000/- on the appellant-company. The Commissioner (Appeals) upheld the adjudication order.

3. Learned Advocate on behalf of the appellant submits that the appellant had no knowledge that the goods were not duty paid and liable for confiscation under Central Excise Act, 1944 and, therefore, no penalty can be imposed under Rule 26 of the Central Excise Rules, 2002. He also submits that the appellant entered into agreement with M/s Interscape for supply of the goods. The value indicated in the agreement is inclusive of all taxes. He also submits that the entire transaction was recorded in their books and account and payments made by cheques. In addition to that, the appellant paid the amount to M/s Interscape by indemnifying the compliance of all rules and regulations as applicable. He drew the attention of the Bench to the Money receipt dated 30.4.2004. He also submits that on the identical situation, for the earlier period, the Division

Bench of the Tribunal in their own case of M/s Hotel Rajputana Place Sheraton vs. CCE vide Misc. Order No. 129/03-B dated 11.11.2003 set aside the penalty on the appellant.

4. Learned DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the appellant had not taken reasonable steps in respect of the payment of duty by M/s Interscape. He further submits that the appellant failed to verify the duty paying documents from M/s Interscape and, they had knowledge of clandestine removal of the goods.

5. After hearing both the sides and on perusal of the records, I find that the Commissioner (Appeals) observed that the condition of the agreement itself lies the burden on the appellant to verify the actual payment of tax at the time of making payment of value of the goods. It is seen that Sh. Arun Caroli, Finance Controller of the appellant in his statement dated 27.9.2005 stated that they had ~~insisted~~ invited quotation for guest room renovation and received quotation from M/s Interscape and after negotiation, a Letter of Intent was issued to them to carry out work relating to new fixed furniture, restoration of fixed furniture and restoration of fixed furniture for a total value of Rs.70,10,726/- inclusive of all taxes, duties and levies etc; that they have not provided labour and raw material required for execution of the aforesaid work. It is seen that

M/s Interscape had given declaration in the money receipt to the appellant as under:-

"We further confirm that we have complied with all laws and regulations as applicable and have paid/deposited all taxes, duties, etc. and other statutory levies in respect of all work done by us for this Project. We hereby undertake to indemnity you and hold you harmless against any liability devolving upon you on account of breach of any such statutory obligation by us".

6. Rule 26 of the Central Excise Rules, 2002 provides imposition of penalties on any person for acquiring, processing of, transporting, removing, depositing, keeping, selling of excisable goods, for which they knew or had reason to believe are leviable for confiscation under Central Excise Rules, 1944. In the instant case, there is no statement or any other material is available that the appellant had any knowledge that the goods are liable for confiscation. On the other hand, it is noticed that the appellant have taken reasonable steps in respect of payments made by them to the Interscape as mentioned in the receipt dated 10.07.2004. It is seen that the Tribunal in their own case in the earlier period set aside the penalty holding that there is no finding, in the impugned order that the parties, in any manner, dealt with the subject goods with the knowledge or belief that the goods were liable to confiscation. Hence, imposition of penalty on the appellant is not justified.

7. Learned DR placed the reliance on the decision of the Tribunal in the case of Interscape vs. CCE, Jaipur reported in 2003 (157) ELT 221 (T-D). In the said case, the appellant company was not the party. The Tribunal upheld the demand of duty, penalty and confiscation against M/s Interscape. In the present case, the appellant is not concerned with the case of M/s Interscape and, therefore, the case relied upon by the learned DR is not relevant.

8. In view of the above discussions, the imposition of penalty of Rs.50,000/- on the appellant company is set aside. The appeal is allowed with consequential relief.

(Order dictated & pronounced in the open court on 27.8.2009)

(P.K. Das)
Member (Judicial)

Ckp