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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/2997 – 2998 / 2007 –SM[BR] E/ CO / 251 / 2007 –SM[BR] Date 04/11/2009

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

To :
C.C.E.RAIPUR

DHAMTARI ROAD,TIKRAPARA,RAIPUR.

C.C.E.RAIPUR

Appellant

Vs

M/S R.NARAYAN STEEL INDUSTRY.

Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1364 -1365 / 2009 –SM[BR] dated 23.10.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
1. M/S R.NARAYAN STEEL INDUSTRY.
2. SHRI MANOJ CHAND PARTNER
349,URLA INDUSTRIAL AREA,RAIPUR.

2. Adv. / Consult
MR.BIPIN GARG

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH

Excise Appeal No.E/2997-2998/2007
E/CO/251/2007
(Arising out of Order-in-Appeal No.137-138/RPR-I/2006 dated 23.6.2006 passed by the Commissioner (Appeals-I), Central Excise, Raipur)

Date of Hearing: 21.10.2009
Date of decision: 21.10.2009

Commissioner of Central Excise, Raipur — Appellant

Vs.

(1) M/s.R.Narayan Steel Industries
(2) Shri Manoj Chand, Partner — Respondent

Present for the Appellant: Shri V.K.Saxena, Joint CDR
Present for the Respondent: Shri Bipin Garg, Advocate

Coram: Hon'ble Mr.D.N.Panda, Judicial Member

Final **ORDER NO.** 1364-1365/2009 SM (DN) **DATED:21.10.2009**

PER: D.N.PANDA

Revenue's grievance is that the ld. Commissioner (Appeals) should not have reduced penalty under Section 11AC of the Central Excise Act, 1944 when the levy of equal penalty is the prescription of law. Learned Joint CDR submits that decision taken by the learend First Appellate Authority is not in consonance with the law for the allegation made out in the show cause notice clearly bringing out clandestine removal of the goods.

2. Ld.Advocate, Shri Bipin Garg on the other hand, invites attention to page 29 of appeal folder dealing with proposed consequences of penalty under Section 11AC of the Central Excise Act, 1944 in the show cause notice. According to him, when there was proposal of 25% amount of duty to be levied as penalty in SCN, there cannot be higher penalty imposable under the law. He relies on the decision of the Hon'ble Delhi High Court in the case of K.P.Pouches (P) Ltd. vs. Union of India-2008 (228)ELT 31 (Del.)

3. Heard both sides and perused the record.

4. It is settled principle of law that no one can be adversely dealt without an opportunity being given against a liberal consequence proposed by SCN. When opportunity was granted for leading defence for imposition of penalty @ 25% of the duty amount, the litigant cannot be adversely dealt. So also Hon'ble High Court of Delhi has laid down the law in the case of K.P.Pouches (P) Ltd. holding that when the law prescribes to comply with the dose of penalty @ 25% in the fitness of the circumstances of the case as required by law, there cannot be deviation to that. Such proposition of law was also not followed by the first appellate authority.

5. In order to resolve the dispute, it is therefore necessary to send the matter back to learned Adjudicating Authority to examine whether entire amount of duty was paid and option for payment @ 25% of duty amount towards penalty is admissible following the ratio laid down by Hon'ble High Court of Delhi in K.P.Pouches case cited (supra). Without granting such opportunity, there cannot be

levy of penalty whimsically. Hon'ble High Court of Delhi in para 24 of its judgement has categorically held that failure of the assessee to pay the penalty amount within 30 days shall take away his right to such concessional penalty. Keeping in view the ratio laid down by Hon'ble High Court of Delhi, the adjudicating authority has to re-determine the quantum of penalty which has also been wrongly determined by the learned first appellate authority. If there is any excess amount paid towards penalty, that shall be refundable.

6. So far as penalty on Shri Manoj Chand, Partner is concerned, his guilt intention does not come out from SCN. He is not found to be instrumental to defraud revenue. When such circumstance, does not come out, the assessee should succeed and Revenue's appeal shall fail.

7. In the result, Revenue's appeals are allowed by a limited extent modifying the first appellate order as indicated above and remanding the matter to learned Adjudicating Authority to re-determine the quantum of penalty in respect of M/s.R.Narayan Steel Industries.

8. Cross objection filed by assessee is also disposed off with the aforesaid consequence of Revenue's Appeal.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

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