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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/1645/2009 – SM[BR] Date **13/01/2011**

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

To :
M/S BEAS SCIENTIFIC DYERS,
NEW SHAKTI NAGAR, LUDHIANA.

M/S BEAS SCIENTIFIC DYERS, Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 48 / 2011- **SM[BR]** dated 5.1.2011 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. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
MR.SUDHIR MALHOTRA.
13-R, HUKAM CHAND COLONY,
NEAR D.A.V COLLEGE,
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. 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. 1645 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 39/CE/LDH/2009 dated 6.3.2009 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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

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M/s. Beas Scientific Dyers. Appellants

Vs.

Commissioner of Central Excise Ludhiana Respondent

Appearance:

Shri Poojan Malhotra, Advocate for the Appellants
Shri K.P. Singh, SDR for the Respondent

Date of Hearing/decision : 05.01.2011

Final **ORAL ORDER NO. 48/2011 SM(BR)**

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 39/CE/LDH/2009 dated 6.3.2009.

2. Heard both sides.

3. When the officers visited the factory premises on 25.9.03, they found stock of grey yarn of 2520 Kgs. as against total quantity of 20,580 Kgs. as per form IV register. Shri Ashok Kumar partner in his statement dated 25.9.03 admitted the shortage of grey yarn and clarified that the goods were cleared on sale on cash basis after dying to customers for the first time on 29.4.03 and that he did not know further details of the customers. In pursuance of the statement, the duty amount of Rs.2,79,135/- was paid on 1.10.03. The show cause notice was issued on 12.1.04 proposing appropriation of duty already paid and proposing penalty. The appellant in reply dated 29.4.04 claimed that the stock taking was defective as the same has not taken into account the materials issued for processing on the date of visit of the officers. The original authority confirmed the demand of Rs.2,79,135/- which already stood paid and imposed equal amount as penalty. In addition, he imposed a penalty of Rs.One lakh on the partner Shri Ashok Kumar. On appeal by the party, Commissioner upheld the order of the original authority.

4. Learned advocate submits that the demand has been based on assumption and presumption and the issue of grey yarn for processing

has not been taken into account for arriving at the shortage. The statements were taken from the partner under pressure and the same is contrary to the factual position and it should not be relied upon. In this regard, he relied on the decision of the Tribunal in a case of Shabnam Synthetics vs. CCE Surat reported in [2006 (202) ELT 379] and the decision of the Tribunal in the case of Triveny Spinning Mills (P) Ltd. vs. CCE, Ludhiana reported in [2006 (201) ELT 220].

5. Learned SDR reiterates the findings and reasoning of the Commissioner (Appeals) and submits that it is a clear and admitted case of clandestine removal.

6. Learned Advocate alternatively submits that the Commissioner (Appeals) has not given an option to pay reduce penalty in terms of proviso to section 11AC. He seeks that such an option may be granted to them in the light of decision of the Delhi High Court in the case of K.P. Pouches reported in [2008 (208) ELT 31 (Del)].

7. I have carefully considered the submissions from both sides and perused the records. It is noticed that the shortage of grey yarn was about 90%. The partner in his statement dated 25.9.03 has clearly admitted clearance of yarn after dying without payment of duty to a customer on cash basis. He also pretended that he did not know any further details about the said customer. However, the duty involved stands paid on 1.10.03. The show cause notice was issued on 12.1.04 and admittedly no retraction of the statement has been given by the partner. Nearly after a year i.e. on 24.9.04, a feeble attempt has been

made in their reply to the show cause notice claiming that the 90% shortage found was attributable to the officers failing to take note of materials issued for processing. This in the given facts of the case, is clearly ant after thought and does not deserve any consideration. The facts of the case in the decision relied upon by the learned advocate are clearly different from the facts of the present case and therefore, the same have no application to this case and therefore, there is no merit in appeal.

8. However, the submission that the appellants should be extended option to pay reduced penalty under proviso to section 11AC, as they have paid the duty involved before issue of show cause notice, deserves to be accepted.

9. In the light of the above, the appeal is disposed of as follows:-

a) The appeal is rejected.

b) However, the appellant is given an option to pay penalty of Rs.69,783.75p within 30 days from today. If the amount is not paid within 30 days, the penalty payable shall be Rs.2,79,135/-.

(M. Veeraiyan)
Member(Technical)

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