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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/595 /2009 – SM[BR] Date **22/02/2011**

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

To :
C.C.E. LUCKNOW

7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant

Vs

M/S VINAYAK DRAWINGS, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 129 / 2011 –SM[BR]** dated 8.2.2011 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 VINAYAK DRAWINGS,
SARASWATI KUND, NEAR HOTEL
RADHA ASHOK, PANCHVATI,
MATHURA.
2. Adv. / Consult
NONE:--------------------

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
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 -
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Appeal No. 595 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 218-219/CE/LKO/ 2008 dated 16/12/2008 passed by The Commissioner (Appeals), Central Excise & Service Tax, Lucknow.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, 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?	:
2.	Whether it would 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 Department Authorities?	:

CCE, Lucknow — Appellant

Versus

M/s Vinayak Drawings — Respondent

Appearance

Ms. Rim Jhim Prasad, Authorized Representative (SDR) – for the respondent.

None – for the appellant.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 08/02/2011.

Final Order No. 129/2011 SM (BR) Dated : ___________

Per. Rakesh Kumar :-

The respondent are a wire drawing unit, manufacturing copper wire chargeable to Central Excise Duty under sub-heading 74081100 of the Central Excise Tariff. On 22/2/07 their unit was visited by the Central Excise offices and the factory was found to be locked. The officers, therefore, sealed the lock on the gate. On 23/2/07, the factory was searched by the officers in presence of respondent's representative and it was found that the unit had two wire drawing machines and was engaged in the manufacture of copper wire but neither had obtained Central Excise Registration nor had given any declaration for availing the SSI exemption. The stock of finished goods in the factory, therefore, was placed under seizure. The statement of Shri Shyam Sawaria, owner of the respondent unit was recorded, wherein he stated that he was manufacturing copper wire for the last two-three months but can produce any documents with regard to starting of the unit, sale of finished goods or purchase of the raw material, that no such records are maintained, that he was receiving raw materials from various persons and was returning the finished goods – copper wires on kacha receipt only which were being destroyed after receipt of the payment, that no record of production or clearance was being maintained and that no option for availing SSI exemption under Notification No. 8/03-CE has been exercised by making declaration to the Department. In view of this, after issue of show cause notice, the Assistant Commissioner vide order-in-original dated 22/9/08 ordered confiscation of the seized copper wire value at Rs. 1,05,000/- with option to be redeemed in payment of fine of Rs. 50,000/- in addition to payment of Central Excise duty and beside this imposed penalty of Rs. 17,136/- on the respondent M/s Vinayak Drawings and penalty of same amount on Shri Shyam Sawaria, owner of the respondent firm. On appeal to Commissioner (Appeals), the Commissioner (Appeals), by the impugned order-in-appeal dated 16/12/08 set aside the Assistant Commissioner's order. The penalty on Shri Shyam Sawaria, Proprietor of the respondent firm was set aside on the ground that separate penalty on firm and its proprietor is not imposable. As regards the case against the respondent firm, the Commissioner (Appeals) observed that the respondent were eligible for SSI exemption and hence there was no case for confiscation of the finished goods lying in stock with them or imposing penalty on them. It is against this order of the Commissioner (Appeals), that the Revenue has come in appeal.

2. Though notice regarding hearing of this matter had been sent to the respondent well in time, the same had been returned undelivered and on earlier occasions also the notice had been returned undelivered. In view of this, so far the respondent are concerned, this matter is being decided ex-parte.

2.1 Heard Departmental Representative who reiterating the grounds of appeal in the Revenue's appeal, pleaded that in this case even if the respondent were eligible for SSI exemption no option in this regard had been exercised by them by filing a declaration to the Department, that the goods manufactured by the respondent were excisable goods attracting Central Excise duty and the same do not become fully exempt from duty under SSI exemption unless the manufacturer exercises an option for availing of the same, which has not been exercised in this case by filing a declaration or intimation to the department, that the respondent were admittedly not maintaining any record whatsoever of the production of the finished goods and clearance thereof and the records of the sales were being systematically destroyed by them after delivery of the finished goods to the customers, and that in view of this, the impugned order is not sustainable.

3. I have carefully considered the submissions from the Departmental Representative and perused the records.

4. There is no dispute about the fact that the goods being manufactured by the respondent were excisable goods attracting Central Excise duty. Shri Shyam Sawaria, owner of the respondent firm, in his statements recorded on 23/2/07 and 28/7/07 has stated that no intimation to the department regarding the manufacturer of excisable goods had been given by him, that no option for availing of the SSI exemption

notification has been exercised and that no records regarding production or clearance of the excisable goods were being maintained and that the clearances of the finished goods were under kacha slips which were being destroyed by him. Since in this case the goods being manufactured were excisable goods attracting Central Excise duty, the same would not automatically become exempt from duty under SSI exemption under Notification No. 8/03-CE, unless the assessee exercises the option for availing the same by filing the declaration to the department. In this case, admittedly no declaration had been made and on the contrary the respondent was not only not maintaining any record of production and sales but was also systematically destroyed the record of clearances of the finished goods. In view of this, the seized goods had been correctly confiscated and penalty had been correctly imposed on the respondent firm and as such the impugned order setting aside the confiscation of the seized goods and penalty on the respondent firm is not correct. The same is set aside and in this regard the Assistant Commissioner's order is restored. As regards, the penalty on Shri Shyam Sawaria, Proprietor of the respondent firm, since penalty on the respondent firm has been imposed, separate penalty on Shri Shyam Sawaria is not called for and as such, the Commissioner (Appeals)'s order setting aside the penalty on him is upheld. The Revenue's appeal is partly allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK