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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/590 /2008-SM[BR]** Date **04/05/2011**

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

To :
C.E.E. RAIPUR

CENTRAL EXCISE BUILDING, DHAMTARI
ROAD,TIKRAPARA,RAIPUR 492001.

C.C.E. RAIPUR Appellant

Vs

M/S HIRA INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.244 / 2011 –SM[BR]** dated 26.4.2011 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 HIRA INDUSTRIES LTD.
SHRI C.RAO,DIRECTOR,M/S HIRA
INDUSTRIES LTD.572, URLA,
INDUSTRIAL AREA, URLA
,RAIPUR-493221 (C.G.)
2. Adv. / Consult **SHRI SAURABH YADAV ADV.**
A-5, BASMENT LAJPAT NAGAR-III, NEW DELHI-24.
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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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. 590 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 171 & 172/RPR-II/07 dated 19.12.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Raipur]

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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Commissioner of Central Excise
Raipur — Appellants

Vs.

M/s. Hira Industries Ltd. — Respondent

Appearance:
Shri K.P. Singh, SDR for the Appellants
Shri Saurabh Yadav, Advocate for the Respondent

Date of Hearing/decision : 26.04.2011

Final

ORAL ORDER NO. 244/2011 SM (BR)

Per M. Veeraiyan:

Heard both sides.

2. The original authority confirmed the demand of duty of Rs.1,51,344/- along with interest and imposed equal amount as penalty under section 11AC read with Rule 25 of the Central Excise Rules. He also imposed a penalty of Rs.1000/- on the Director of the respondents. The duty involved stands paid on 14.12.07. On appeal by the party, the Commissioner (Appeals) vide order dated 19.12.07 upheld the demand of duty along with interest but reduced the penalty to Rs.25,000/- on the Company and set aside the penalty imposed on the Director of the Company. The department is in appeal seeking restoration of penalties imposed by the original authority.

3. The relevant facts, in brief, are that the respondent company, a manufacturer of cement and clinker stopped the production since 30.10.97 and were showing stock of 52.500 MT of cement in silos and 704.219 MT of clinker as stored in open yard. The respondents has written off the stock of cement in silos and clinkers in open yard as having been damaged in rain and accordingly, has prepared the balance sheet for the year ending March, 1998. The respondents reflected these adjustments in the RT 12 returns for the month of August, 2000 only. They followed it up by seeking remission of duty vide letter dated 18.12.2000. The remission appears to have been denied on the ground that the goods were not available for inspection when the officers visited the factory premises in March, 2001 and thereafter. The

original authority treated the shortage as a case of clandestine removal and confirmed demand of duty and imposed penalties as mentioned above. Commissioner (Appeals) has treated this as a case involving demand of duty consequent to denial of remission of duty. Accordingly, he confirmed the demand of duty along with interest but reduced the penalty to Rs.25,000/-.

4. Learned SDR submits that write off has been done without bringing the relevant facts to the knowledge of the department. When the officers visited the factory for verification of the stock, the stock was not available and therefore, the same has been rightly held to have been clandestinely removed by the company. It is a clear case of suppression of relevant facts justifying invocation of section 11AC and therefore Commissioner (Appeals) erred in reducing the penalty from Rs.1,51,344/- to Rs. 25,000/-. He also erred in setting aside the penalty on the Director of the respondent company. The respondent company has also not challenged the Panchnama.

5. Learned advocate strongly supports the order of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides and perused the records. It is not being disputed that the manufacturing activities in the factory stand closed with effect from 30.10.97. It is also not being disputed that the closing stock of cement as on 30.10.97 was in silos and clinker was in open yard. Under these circumstances, the claim of the respondent company that the cement and clinker have

been damaged due to rains and that they have written off the value in the balance sheet for the year ending March, 1998 appears reasonable. However, as the respondent company has not followed the procedure for applying remission, the plea for remission stands denied and the duty stands demanded. Commissioner (Appeals) has accordingly, confirmed the demand of duty along with interest. The party is not in appeal against the demand of duty and interest.

7. In the facts of the case as narrated above, to presume that remnant of stock of cement in silos and clinker stored in open yard were clandestinely removed cannot be accepted in the absence of any evidence to corroborate such a charge. Therefore, the ingredients of section 11AC is not present in the present case. In view of the above, the decision of the Commissioner (Appeals) in reducing the penalty to Rs.25,000/- on the respondent company calls for no interference.

8. Since the allegation of the department regarding clandestine removal is not upheld, the question of penalty on the Director of the respondent company for alleged role in the evasion does not arise.

9. In view of the above, the appeal of the department is rejected.

(M. Veeraiyan)
Member(Technical)

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