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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/2723 - 2724/2009 – SM [BR]** Date **21/07/2011**

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

To :
C.C.E. DELHI I

C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI I Appellant

Vs

M/S M.S. PANEL, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 404 -405 / 2011-SM[BR]** dated 12.7.2011 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 M.S. PANEL,
C-106, NARAINA INDUSTRIAL
AREA, PHASE-I, NEW DELHI.

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. 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

3. SHRI MANJIT SINGH, PARTNER
M/S M.S. PANEL,C-106, NARAINA INDUSTRIAL AREA, PHASE-I, NEW DELHI.

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delli,

Court No.IV

Date of hearing & decision : 12. 07. 2011

Ex. Appeal No.2723-2724/09-SM

(Arising out of O/A No. 103-104/CE/DLH/2009 dt. 08.07.09 passed by Commr.of Central Excise (Appeals), Delhi I)

For approval and signature:

Hon'ble Shri Ashok Jindal, Member (Judicial)

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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

CCE, Delhi I ...APPELLANT(S)

VERSUS

M/s M. S. Panel
Shri Manjit Singh

RESPONDENT (S)

APPEARANCE

Rep. by Shri Fateh Singh, DR for the Appellant-Revenue
Rep. by none for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Final Oral Order No. 404- 405/2011 SM (Br)

Per Shri Ashok Jindal :

These appeals have been filed by the Revenue against the impugned order wherein the Commissioner (Appeals) has given the benefit of the proviso I & II of Section 11AC of the Central Excise Act, 1944 by reducing to 25% of duty amount confirmed as penalty following the decision of the Hon'ble Delhi High Court in the case of K. P. Pouches Vs. UOI reported in 2008 (228) ELT 31 (Del.) wherein the Hon'ble Delhi High Court has held that when the assessee has paid duty, interest before issuance of show-cause notice, the penalty is to be reduced to 25% of the duty confirmed and he has dropped the penalty on the partner relying on the decision of the Hon'ble Bombay High Court in the case of CC Vs. Jupitor Exports reported in 2007 (213) ELT 641 (Bom.) wherein it has been held that when the firm penalized, no personal penalty is imposable on the partner. The Revenue has challenged this observation of the Commissioner (Appeals).

2. The ld. DR appearing on behalf of the appellants reiterated the grounds of appeal and submitted that in this case, the penalty can not be reduced to 25% as the respondents has admitted their duty liability. He also submitted that a separate penalty on the partner is imposable in the provisions of law. Therefore, he prayed that the impugned order is to be set aside and the adjudication order is to be restored.

3. Heard the ld. DR for the Revenue. After hearing the ld. DR and going through the impugned order, I find that the Commissioner

(Appeals) has dealt the issue in detail in paragraphs 5 & 6 of the impugned order which are reproduced below :

"5. I find that it has been held by the Hon'ble High Court that where assessee hs deposited the entire duty amount well before issuance of show-cause notice, hence liable to pay only 25% of duty amount as penalty. Similar view has also been taken by the Hon'ble Dehli High Court in the case of K. P. Pouches Vs. UOI – 2008 (228) ELT 31 (Del.) and by the Hon'ble Tribunal in the case of M/s Pasupati Prints Pvt. Ltd. & Anr. Vs. CCE & C,Surat I-2007 (220) ELT 167 (Tri.-Ahmd.) wherein it has been held that penalty would be reduced to 25% of duty determined as duty is deemed to have been paid within 30 days of issue of such order where duty has been paid before the issue of show-cause notice. In the instant case also, the appellants have deposited the Rs.3,76,643/- towards duty involved along with interest vide TR-6 Challan No.01/05-06 dated 15.09.05 against the duty liability of Rs.3,69,258/- before the issue of show-cause notice therefore ratio of the above judgements is correctly applicable to the instant case. In view of the above principle laid down by the Hon'ble Delhi High Court that penalty would be reduced to 25% of duty determined as duty is deemed to have been paid within 30 days of issue of such order where duty has been paid before the issue of show cause notice, I find that in the instant case also the appellants had paid more than the entire duty liability before the issue of show-cause notice therefore, I hold that penalty imposed under Section 11AC is to be reduced to the 25% of the Central Excise duty involved i.e. Rs.3,69,258/- as per the proviso to Section 11AC and as per the principle laid down by the Hon'ble High Court that. Accordingly, I reduce the penalty under Rule 25 read with Section 11AC ibid to Rs.92,315/- on appellant No.1.

6. Regarding imposition of penalty of Rs.92,314/- on appellant No.2 under Rule 26 of the Central Excise Rules, 2002, I find that the appellant No.2 has submitted that penalty on partner is not imposable where partnership firm has already been penalized for the same offence as has been held by the Hon'ble Court and Tribunal in following judgements :-

(a) CC Vs. Jupitor Exports - 2007 (213) ELT 641 (Bom.)

(b) M/s Sarpin Pharmacol Vs. CCE - 2004 (167) ELT 472 (T)

(c) Tip Toe Plastic Ind. Vs. CCE - 2006 (73) RLT 470 (T)

I find that Hon'ble Bombay High Court in the case of CC Vs. Jupitor Exports - 2007 (213) ELT 641 (Bom.) has held as below :

19. Having heard the rival parties, no fault can be found with the view taken by the Tribunal. It is now well settled that when partnership is penalized, separate penalties cannot be imposed on the partners.

I find that similar view has been taken by the Hon'ble Tribunal in the case of M/s Sarpin Pharmacol Vs. CCE - 2004 (167) ELT 472 (T) wherein it was held as below :

6. In view of our finding that the appellant-firm had suppressed facts from the department with intent to evade payment of duty, we have to hold that a penalty was liable to be imposed on them under Rule 173Q of the Central Excise Rules, 1944. The penalty of Rs.50,000/- imposed on them appears to be reasonable. However, there is no justification for imposing separate penalties on the partners of the firm. It is settled law that a partnership firm has no legal personality distinct from that of its partners. Since a penalty has already been imposed on the firm, any separate personal penalty on its partners is not warranted.

> In view of the above principle laid down by the Hon'ble High Court and Tribunal, I hold that penalty on partner is not imposable as penalty on partnership firm has already been imposed and is therefore set aside."

The Commissioner (Appeals) has passed the impugned order following the decision of the Hon'ble Delhi High Court in the case of K. P. Pouches (supra) by reducing penalty on the firm to 25% of duty and in case of partner dropped the penalty relying on the decision of Jupitor Exports (supra). In the grounds of appeal, the Department has not brought any decision contrary to these decisions of the Hon'ble Dehli High Court in the case of K. P. Pouches (supra) and the Hon'ble Bombay High Court's decision in the case of Jupitor Exports (supra). The Department has filed these appeals in casual manner without relying on the decisions of the Hon'ble High Courts. It is the duty of the Committee of the Commissioners to follow the decisions of the Higher Forum. By filing these appeals, the Revenue has wasted time of this Tribunal [illegible] no merits. Therefore, the appeals are dismissed by upholding the impugned order.

(Dictated and pronounced in the open Court)

(Ashok Jindal)
Member (Judicial)

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