(18)

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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/2918 - 2919/2009 & E / 2932 - 2933/2009 – SM [BR]** Date **03/08/2011**

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

To :
M/S NATRAJ PLAST INDUSTRIES LTD
C-140, ASHOK VIHAR, PHASE-I, DELHI.
110052

M/S NATRAJ PLAST INDUSTRIES LTD Appellant
Vs
C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 437 – 440 / 2011-SM[BR] dated 20.7.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult
MR.S.JAINA & ASSOCIATES
84,DARYAGANJ,N.DELHI

[2] SHRI A.K. MISHRA CONSTT.
1, CSC-6, IST FLOOR BSHIND SHAKTI APPARTMENTS
SECTOR-9, ROHINE DELHI-85.

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)

2. SH DINESH KUMAR GUPTA
C-140, ASHOK VIHAR, PHASE-I, DELHI.

3. RAJESH MITTAL,PROPRIETOR
M/S ADITYA PLASTICS, 1085, IST FLOOR, DSIDC, NARELA, DELHI.

4. SUNIL MITTAL,PROPRIETOR
M/S MUKESH INDUSTRAIES(INDIA) R/O BM-31, IST FLOOR, SHALIMAR BAGH, DELHI.

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:20.07 .2011

For Approval and Signature:

Hon'ble Dr. Chittaranjan Satapathy, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 of 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

Central Excise Appeal No.2918 of 2009

Arising out of the 117-120/CE/DLH/09 dated 4.8.09 passed by the Commissioner (Appeals), Central Excise, Delhi I.

Natraj Plast Industries Ltd. .. Appellants

Vs.

C.C.E., Delhi I .... Respondent

Central Excise Appeal No.2919 of 2009

Arising out of the 117-120/CE/DLH/09 dated 4.8.09 passed by the Commissioner (Appeals), Central Excise, Delhi I.

Sh. Dinesh Kumar Gupta .. Appellant

Vs.

C.C.E., Delhi I .... Respondent

Central Excise Appeal No.2932 of 2009

Arising out of the 117-120/CE/DLH/09 dated 4.8.09 passed by the Commissioner (Appeals), Central Excise, Delhi I.

Sunil Mittal, Proprietor
M/s Mukesh Industries (India) .. Appellant

Vs.

C.C.E., Delhi I .... Respondent

Central Excise Appeal No.2933 of 2009

Arising out of the 117-120/CE/DLH/09 dated 4.8.09 passed by the Commissioner (Appeals), Central Excise, Delhi I.

Rajesh Mittal, Proprietor .. Appellant
M/s Aditya Plastic

Vs.

C.C.E., Delhi I .... Respondent

Appearance:

Ms.Seema Jain, Advocate and Shri A.K. Mishra, Consultant for the appellants.
Shri Anil Khanna, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Dr. Chittaranjan Satapathy, Technical Member

Final Oral Order No. 437-440/2011-SM(BR)

Per Dr. C. Satapathy:

Heard both sides at length.

2. Ms. Seema Jain, learned Advocate appearing for the appellants in Appeal No.E/2918-2919/09 submits that the appellants are not disputing the duty liability in respect of the impugned goods found in the premises of the factory of the appellants and in the factory of the job workers of the appellants. She states that the duty amount which is already paid should be adjusted against the demanded amount which has not been done in the orders passed by the authorities below.

3. She disputes the duty liability in respect of the impugned goods seized from the premises of the appellants in Appeal No.E/2932-2933/2009 and states that the Department has not established conclusively that the impugned goods were cleared without payment of duty by her clients. On a query from the Bench, she fairly states that there is no correlation on record on behalf of her clients to account for all the raw materials bought by them and how they have been used. She also pleads for reduction in penalty in respect of Appeal

No.E/2919/2009 on the ground that already separate penalty equivalent to duty amount has been imposed on M/s Natraj Plast Industries Ltd. of which the appellant is only a Director.

4. Shri A.K. Mishra, learned Consultant appearing for the appellants in Appeal No.E/2932-2933/2009 pleads that the penalties imposed in these two cases are equal being Rs.50,000/- in each case whereas the quantity of goods seized were worth Rs.6,32,213/- in one case and Rs.1,83,250/- in the second case. He prays for reduction of penalty in the second case proportionately.

5. Heard the learned DR Shri Anil Khanna, who painstakingly takes through the evidences collected in these cases and relied upon in a detailed order passed by the original authority. He states that all the submissions made on behalf of the appellants have been duly considered by the original authority and it has been established that the impugned goods have been cleared without payment of duty by the first appellant to the premises of the last two appellants.

6. After considering the submissions from both sides, as well as the evidences and statements on record, I find that the findings of the original authority are detailed, the same take into account all the submissions made on behalf of the appellants and there are adequate reasons given for confirmation of the duty demanded along with interest. As such, there is no case for reduction in the duty amount confirmed. However, the claim made by the learned Advocate Ms. Seema Jain regarding part payment of the duty amount requires to be considered and the same requires to be adjusted against the demand subject to verification.

7. I find that the lower appellate authority has substantially reduced the redemption fine to a very low level of 10% of the value of the goods and therefore, the redemption fine imposed does not require any further reduction.

8. As regards the penalties imposed, I find that the statutory penalty equal to duty has been imposed on the appellant firm M/s Natraj Plast Industries Ltd. In view of the same, and also considering the duty amount involved, separate penalty imposed on the second appellant, who is a Director in the appellant firm, requires to be reduced and I order that the same be reduced to Rs.25,000/- (rupees twenty five thousand only).The penalty on the third appellant in Appeal No.E/2932/2009 is reasonable considering the value of the confiscated goods and hence the same requires no further reduction. However, the penalty imposed on the fourth appellant in Appeal No.E/2933/2009 requires proportionately to be reduced taking into account the lower value of the confiscated goods. Accordingly, I reduce the same to Rs.15,000/- (rupees fifteen thousand only).

9. In the result, Appeal No.E/2918/2009 is rejected but the duty amount paid by the appellant is directed to be adjusted against the demanded amount subject to verification. Appeal No.E/2919/2009 is partly allowed by reducing the penalty to Rs.25,000/-. Appeal No.E/2932/2009 is rejected. Appeal No.E/2933/2009 is partly allowed by reducing the penalty to Rs.15,000/-.

(Dr. C. Satapathy)
Technical Member

scd/