(17)

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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/2626/2005, 2694 - 2695/2005 – SM[BR]** Date **16/09/2011**

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

To :
C.C.E.LUDHIANA
F-BLOCK RISHI NAGAR LUDHIANA PUNJAB

C.C.E.LUDHIANA Appellant

Vs

M/S OSHO FORGE PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 604 -606/2011-SM[BR]** dated 23.8.2011 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 OSHO FORGE PVT.LTD.
VILL-MANGLI LUDHIANA
PUNJAB

2. Adv. / Consult SHRI VIKRANT KAKRIA ADV.
H.NO.5, SECTOR-10A,
CHANDIGARH
[2] SHRI SAURABH YADAVE ADV.
M/S OSHO FORGE PVT.LTD:----------

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

2. M/S VIMAL KUMAR DHALL
VILLAGE UCHHI MANGLI LUDHIANA

3. M/S OSHO FORGE PVT.LTD.
VILLAGE UCHHI MANGLI LUDHIANA

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise Appeal No. E/2626/2005/SM

[Arising out of Order-in-Appeal No.210-211/CE/APPL/LDH/05 dated 26.04.2005 passed by the Commissioner (Appeals), Ludhiana].

CCE, Ludhiana ...Appellant

Vs.

M/s. Osho Forge Pvt. Ltd. ... Respondent

Excise Appeal No.E/2694/2005-SM

[Arising out of Order-in-Appeal No.210-211/CE/APPL/LDH/05 dated 26.04.2005 passed by the Commissioner (Appeals), Ludhiana].

M/s. Osho Forge Pvt. Ltd. ...Appellant

Vs.

CCE, Ludhiana ... Respondent

Excise Appeal No.E/2695/2005-SM

[Arising out of Order-in-Appeal No.210-211/CE/APPL/LDH/05 dated 26.04.2005 passed by the Commissioner (Appeals), Ludhiana].

Shri.Vimal Kumar Dhall ...Appellant

Vs.

CCE, Ludhiana ... Respondent

Present for the Department :Shri Fateh Singh, DR
Present for the Assessee :Shri.Saurabh Yadava, Advocate (Proxi)
Shri Vikrant Kakria, Advocate

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Date of Hearing/Decision:23.08.2011

Final **ORDER NO.** 604 - 606/2011 SM (BR) **DATED:**________

PER: D.N.PANDA

Ld. Counsel submits that Revenue is in appeal against Osho Pvt. Ltd. praying for levy of equal amount of penalty. Assessee Company is in appeal against duty demanded from the company and levy of penalty against Shri Vimal Kumar Dall. He also points out that there were no cogent evidence against both the appellants for confirming duty and penalty. Therefore, not only Revenue's appeal is to be dismissed but also these two appellants should succeed.

2. Ld. DR on the other hand submits that when penalty is leviable that shall be full amount of penalty without any reduction. To this, ld. Counsel opposes submitting that if duty, interest and penalty to the extent of 25% of the duty amount is deposited, there cannot be denial of reduction in penalty following the decision of Hon'ble High Court of Punjab &

Haryana in the case of Bajaj Travels reported in 2011 (21) STR 497 (P & H).

3. Heard both sides and perused the records.

4. The appellant's questionable modus operandi came to light on 12.9.2003 during investigation followed by subsequent visit to its factory on 13.9.2003. Duty evasion was found due to discrepancy in the inventory stock taken by the investigating team. Statement was recorded from the Director Shri Vimal Kumar Dhall on 13.9.2003 bringing out admission of shortage of finished goods as well as raw-material. This was followed by debiting of duty amount of Rs.63,452/- in RG 23 A part 2 account vide entry No.183 dated 13.9.2003. Such act called for issuance of show cause notice and adjudication raising duty demand and penalty. Appellant's grievance was fully considered by the appellate authority while passing the order. He came to the conclusion that shortages were due to non-accountal of the goods. He thoroughly looked into the matter to ascertain how the shortage arose. Appreciating the adjudication order, he came to the conclusion against the appellant.

5. The appellant having paid the duty and also for the cogent evidence on record suggesting clandestine removal of

the shortage quantity of goods without payment of duty, there is no scope to grant any relief on duty element.

6. The Company has already paid duty, interest and reduced quantum of penalty as has been averred by ld. Counsel. Against waiver of penalty against Company, Revenue is in appeal. Tribunal had occasion to deal the matter of penalty of reduced amount in the case of Bajaj Travels. Revenue being dissatisfied with the order of Tribunal in that case went in appeal to Hon'ble High Court of Punjab & Haryana. That appeal was lost as reported in 2011 (21) STR 497 (P&H). In view of no specific denial provision in Section 11AC to grant benefit of reduced penalty, penalty payable by the company is limited to 25% of the duty demanded.

7. Since the whole cause of action arose out of shortage of goods during investigation and there was categorical admission by the Director engaged in day-to-day affairs of the company that sale of finished goods were made without issuance of invoice and raw-material was found short as has been recorded in the first appellate order at page 1, for no rebuttal of such evidence, penalty levied on the Director in Appeal Case No.E-2695/2005 is confirmed and his appeal is dismissed.

8. In view of the order aforesaid, Revenue's appeal in E-2626/2005 is partly allowed. Company's Appeal No.2694/2005 is dismissed in respect of duty reducing penalty to 25% of duty amount.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita