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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/216 /2011 – SM[BR] E/ COD/25/2011-SM[BR]** Date **19/09/2011**

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

To :
M/S SHINO & SONS,
RAIPUR, SARWAN KHERA, AKBARPUR, KANPUR
(DEHAT) (U.P.)

M/S SHINO & SONS, Appellant

Vs

C.C.E. KANPUR Respondent

am directed to transmit herewith a certified copy of **Final order No.609/2011-SM[BR[&M/152/2011** dated 2.9.2011
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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult
MR.AMIT AWASTHI
H-1, IST FLOOR, RADHEY APPARTMENT PLOT NO. 7/116A, SWAROOP NAGAR,
KANPUR-208002

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision 02.09.2011

Excise COD Application No. 25 of 2011-SM in
Excise Appeal No. 216 of 2011-SM

M/s Shino & Sons — Appellants

Vs.

CCE, Kanpur — Respondent

Appearance: Rep. by Sh. A.K. Dixit, Advocate for the appellants.
Rep. by Sh. B.L. Soni, DR for the respondent.

Coram: Hon'ble Sh. D.N. Panda, Judicial Member

Final ORDER NO. 609/2011 SM (Br) & M- 152/2011 SM (Br)

Per: Shri D. N. Panda:

Learned Counsel submits that for ignorance of the appellant and also for his sickness the appeal could not be filed duly. There is delay of 40 days in filing the appeal which may be condoned. For this proposition, he relies on the judgement of the Apex Court in Collector, Land Acquisition Anantnag and Another vs. Mst. Katiji and Others-1987 (28) ELT 185 (SC).

2. Learned DR objects to the above averment of appellant for condonation of delay of 40 days on the plea that the same is not supported by proper cause. Therefore, cause was examined to find out the reason of delay irrespective of length of delay following the Apex Court decision in N.

Balakrishnan vs. M. Krishnamurth – 2008 (228) ELT 162 (SC).

3. The application for condonation of delay states that the appellant himself was taking steps for preparing the appeal and found difficulty to file the appeal duly. Such cause appears to be reasonable in view of small delay of 40 days involved. Ld. Counsel prays for condonation of delay which otherwise shall result in dismissal of the appeal at the threshold and result in rendering injustice to appellant.

4. Considering above prayer, MA is allowed and appeal is admitted.

5. There is no stay application filed by appellant under impression that against redemption fine no application is entertained by Tribunal. Ld. Counsel prays that waiving pre-deposit of penalty and fine appeal may be heard since appellant has gone on suffering.

6. Record shows that, the dispute appears to be only in relation to redemption fine and also penalty. The first appellate order imposed redemption fine of Rs. 2 lakh and penalty of Rs. 25,000/-.

7. Learned Counsel confined his argument to these two limited issues. When there is no much exercise involved in this appeal to be carried out, the appeal is taken up for disposal with the consent of both sides. Since they agree that stay application in this case shall not serve useful purpose of law in view of huge redemption fine involved and stay application is not required against redemption fine.

8. Learned Counsel argues that the redemption fine of Rs. 2 lakh imposed was harsh when the value of the goods is Rs. 4,40,770/-. According to him, there is also no material to suggest that expected profit relating to the goods shall be for Rs. 2 lakh which can be imposed as redemption fine. Also he submits that penalty is not required in this case to be imposed for no malafides of appellant.

9. Learned DR on the other hand submits that redemption fine was imposed because the appellant faced confiscation due to clandestine removal. Therefore, there should be no reduction in penalty nor any redemption fine when the appellate authority has allowed the appeal partly.

10. Heard both sides and perused the record.

11. Facts and circumstances of the case suggest that penalty should be confirmed and redemption fine imposed called for levy of penalty also. ~~fine~~. Therefore, request for wavier of pre-deposit is entertained on oral prayer in view of peculiar facts and circumstances of the case and without this order to be precedent in future. Investigation made out a case against the appellant when the manufacturer-appellant was found to have cleared the goods in violation of exemption limit granted under Notification No. 8/2003 dated 01.03.2003. Evidence gathered establishes the case against the appellant which is revealed from para 2 of the appellate order read with para 5 thereof. The authority accordingly imposed redemption fine of Rs. 2 lakh confirming confiscation in the case.

12. The facts and circumstances appear to have warranted confiscation for the reasoning stated by the appellate order. That decision does not call for interference except the quantum of redemption fine imposed which appears to be disproportionate when the value of the goods is Rs. 4,40,770/-. The appellate authority has assigned no reasoning in his order for the extent of redemption fine imposed. No doubt, clandestine removal is established in this case but the repurcation thereof is not coming out from the record indicating extent of prejudice done to Revenue. Loss of revenue by use of thinner clandestinely removed has not been quantified by the impugned order. Imposition of redemption fine of Rs.2 lakh would have been established bringing out probability of undue gain made by the appellant and quantum thereof determined. Probability of loss of Revenue in this case cannot be ruled out. But there is no scope to uphold the redemption fine of Rs. 2 lakh without reduction. Accordingly, that is reduced to Rs. 1 lakh keeping in view the quantum of undue gain or probable gain that has been made by Appellant at the cost of Revenue. Keeping in view the rationale of benefit of reduction in penalty is granted ~~permitted~~ by Section 11AC of the Central Excise Act, 1944 in certain circumstances the redemption fine may be limited to Rs.1.00 lakh since the appellant was given concession in penalty by first appellate order. The appellate order is accordingly modified.

please refer with correction

13. The next issue is regarding question of penalty. Appellate Authority has already granted benefit relating to penalty reducing the same from Rs. 75,000/- to Rs. 25,000/-. Such penalty was imposed for violation of Rule 25 of the Central Excise Rules, 2002. That rule requires both confiscation and

penalty when the case warranted confiscation. Confiscation being upheld by this order, there is no scope to grant further concession to the appellant on penalty. Therefore, the appellate order on penalty aspect does not call for interference. That is confirmed.

14. In the result, redemption fine is reduced to Rs. 1,00,000/- and penalty levied by Appellate Authority is confirmed. Appeal is partly allowed.

[D.N. Panda]
Judicial Member

Pant