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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/2121/2011 – SM [BR] &E/ STAY /2792/2011-SM[BR] **Date 22/12/2011**

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

To :
M/S BHAGWAN BEARING CO.
B-37, WAZIRPUR INDUSTRIAL AREA,
NEW DELHI. -110052.

M/S BHAGWAN BEARING CO. Appellant

Vs

C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 907/2011-SM[BR]&S/859/2011** dated 13.12.2011 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.K.GUPTA,ADVOCATE
D-75, AMAR COLONY, LAJPAT NAGAR-IV, N DELHI.

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 (Harvana)
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.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

E/Stay/2792 of 2011-SM in &
Central Excise appeal No. 1221/2011-SM

[Arising out of Order-in-Appeal No. 58/CE/DLH/2011 dated 30.6.2011 passed by the Commissioner (Appeals), Central Excise, Delhi-I, New Delhi].

Date of Hearing/decision: 13th December, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member

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 Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Bhagwan Bearing Co., Appellant

Vs.

CCE, Delhi-I Respondent

Present for the Appellant : Shri S.K. Gupta, Adv.
Present for the Respondent : Mrs. R. Jagdav, S.D.R.

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

FINAL ORDER NO. 907/2011 SM (Br) &
S- 859/2011 SM (Br)

Per D.N. Panda:

Learned Counsel submits that Ball Bearing valued at Rs. 15,46,230/- suffering duty found place in incriminating documents. Taxing the said goods again amounts to double taxation. So also demand of excise duty of Rs. 1,17,710/- on Ball Bearings valued at Rs. 15,46,230/- found from the premises of the buyer was unwarranted. It is further submission that levy of duty of Rs. 2,24,050/- on the allegation of finding of katcha slip giving rise to duty demand of Rs. 70,784/- and duty demand of Rs. 1,53,266/- based on katcha slips recovered from buyer's premises was uncalled for. According to him without proper evaluation of the documents the authorities below unreasonably taxed the appellant. Therefore, there may be waiver of requirement of pre-deposit and appeal may also be allowed.

2. Learned D.R. on the other hand, says that the goods found both physically and on the basis of katcha slips were without any evidence of clearance in the eyes of law. Therefore, the authorities have rightly levied duty and penalty.

3. Heard both sides and perused the record.

4. Perusal of Para 4 of appellate order demonstrates that the appellant has followed questionable modus operandi to clear the goods from its factory without being accounted. Discovery of katcha slips testifies/motive of the appellant since possession follows wrongful title. The goods found in the premises of the buyer remained undisputed both as to nexus of the buyer and the seller. Katcha slip found from the premises of the appellant gave rise to duty demand of Rs.

70,784/-. Similar such slips found from the premises of the buyer give rise to demand of Rs. 1,53,266/-. The aggregate demand came to Rs. 2,24,050/-. Learned Adjudicating Authority has recorded that the appellant has paid Rs. 2,20,413/- as per Para 24(iv) of order-in-original.

5. Keeping in view gravity of the issue involved and also concurrent finding of both the authorities below and material facts it is not permissible to grant relief on the de amd of Rs. 2,24,050/- and Rs. 1,17,710/-. At this stage learned Counsel clarified that duty element has already been deposited with interest and 25% of duty towards penalty. The appellate order does not throw light on the elements calling for levy of penalty. But the methodology adopted by Appellant called for imposition of penalty under Section 11AC of Central Excise Act, 1944 read with concessional penal provisions thereunder. The appellant having come forward to buy peace, discharging major part of duty element with interest and penalty it may not be improper to grant concession in penalty. Therefore, confirming the duty demand of Rs. 2,24,050/- and Rs. 1,17,710/- the appellant shall avail concession in penalty in both cases of levy of duty which shall be confined to 25% of duty levied. If that has not been recovered the authorities are at liberty to recover the same in accordance with law along with duty to the extent unpaid.

6. In the result, both stay application and appeal are disposed in the manner above. The appellant gets partial relief.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

RK