TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/488 /2008 – SM[BR] Date 16/03/2010

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

To :
M/S E.M.ELECTRO MECHANICALS PVT. LTD.
31, SECTOR-E, GOVINDPURA INDUSTRIAL
AREA,BHOPAL-462023

M/S E.M.ELECTRO MECHANICALS PVT. LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 320 / 2010 –SM[BR] dated 9.3.2010 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 BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult SHRI B.S. RAJESH AGRAJIT ADV.
AGRAJIT & CO.
SUPREME COURT NEW DELHI -110001.

3 S.D.R
~~4 J.C.D.R~~.
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.E/488 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.83 & 84 CE/Appeal/BPL/07-08 dated 21.08.2007 passed by the Commissioner of Central Excise (Appeals), Bhopal]

Date of Hearing/ Decision:09.03.2010

For approval and signature:

Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.	:	Yes
2. Whether it should be released under Rule 27 of the 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

M/s. E.M. Electro Mechanicals Pvt. Ltd. ...Appellants
(Rep. by Shri B.S. Rajesh Agrajit, Advocate)

Vs.

CCE, Bhopal ...Respondent
(Rep. by Shri I. Baig, SDR)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**

Final Order No. 320/2010 SM (Br)/Dated:09.03.2010

<u>Per M. Veeraiyan:</u>

This is an appeal against the order of the Commissioner (Appeals) No. 83 & 84 CE/Appeal/BPL/07-08 dated 21.08.2007.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellant is a manufacturer of excisable goods such as transformer tanks, high pressure valves, pipe fittings. They have two units separated by a distance of about 1 Km. The second unit was registered with the Excise Authorities w.e.f. 30.03.2006. The appellant assembled columns in Unit-I using inputs on which credit was taken and transferred 18 columns to their Unit-II and 12 of them were erected there and 6 of them were lying for being erected. At this juncture, on 6.07.2006, the officers visited Unit-I and Unit-II. They seized 6 columns valued Rs.1,05,906/- lying in Unit-II. The appellant debited the entire amount of Rs.80,730/- being duty involved on the 18 columns on 27.07.2006. Show cause notice was issued to the appellants on 11.12.2006 proposing confiscation of 6 columns and also for demanding duty of Rs.80,730/- on 18 columns and raw materials and consumables supplied totalling valued Rs.4,94,672/- along with interest and proposing penalty. Original Authority confiscated the six fabricated columns valued at Rs.1,05,906/- but allowed the same to be redeemed on payment of fine of Rs.5,000/-. He confirmed demand of Rs.80,730/- on 18 columns. He also imposed a penalty of Rs.1,000/- under Rule 25 and Rule 27 of the Central Excise Rules, 2002. Against the said order, both the Department and the party filed appeals before the Commissioner (Appeals). The Commissioner (Appeals) upheld the duty demand on 18 columns. He also upheld the confiscation of 6 columns and redemption

fine of Rs.5,000/-. He accepted the plea of the Department for imposing penalty under Section 11 AC and accordingly, imposed penalty of Rs.80,730/-. However, he set aside the penalty of Rs.1,000/- imposed under Rule 25 and 27 of the Central Excise Rules.

3. At the outset, ld. Advocate for the appellants submit that they are not contesting the demand of duty and interest. However, he submits that the appellants removed the fabricated columns to Unit-II, which was a registered unit following challan procedure prescribed for removal of cenvatable inputs to Unit No.II, which was basically an expansion of the Ist Unit. There was no intention whatsoever in removing six fabricated columns for setting up the Unit-II. If there was any violation, it was technical in nature and question of imposition of penalty under Section 11AC did not arise.

4. Ld. SDR submits that columns fabricated in Unit-I should have been removed only on payment of duty and since they are getting erected in Unit-II, they were not be eligible for Cenvat credit also. He reiterated the reasoning of the Commissioner (Appeals) in imposing penalty under Section 11 AC, which is reproduced as under:-

> "Once the allegation of suppression of facts/clandestine clearance of the goods has been made and established, the lower authority had no leeway in the matter of imposing penalty under Secdtion 11 AC of the Central Excise Act, 1944. In the case of CCE, Delhi-IV Vs. IIpea Paramount Pvt. Ltd. Vs. 2007 (213) ELT

500 (LB), the Larger Bench of the Hon'ble Tribunal has held that the invocation of extended period of limitation for demand under proviso to Section 11 A of Central Excise Act, 1944 is sufficient for imposing penalty under Section 11 AC, since Section 11 AC and proviso to Section 11 A, have identical words. The Larger Bench further held that the penalty has to be equal to the Central Excise duty evaded. I, therefore, hold that the assessee is liable to pay a penalty of Rs.80,730/- (Rupees Eighty Thousand Seven Hundred Thirty only) under Section 11 AC ibid."

5. I have carefully considered the submissions from both the sides. Undisputedly, the appellant are having two different units. The columns fabricated using inputs on which Cenvat credit has been taken by Unit-I were removed to Unit-II for erection. The appellants are not disputing the demand of duty and interest. Whether penalty under Section 11 AC requires to be upheld is the issue to be considered. It is to be noticed that the movement is between two registered units of the same appellants and they have removed the goods undisputedly under challans prescribed under Rule 4 of the Cenvat Credit Rules. Under these circumstances, the claim of the appellant that they were under bona fide belief that such inter-unit movement can be made without payment of duty deserves to be accepted. It is not a case that they have removed the same without preparing any document. Since no mens rea is involved and since the movement is from one registered unit of the appellants to another, the penalty under Section 11 AC is not justified.

6. In view of the above, the appeal is disposed of by upholding the demand of duty and interest as uncontested and setting aside the penalty imposed under Section 11 AC. The redemption fine of Rs.5,000/- imposed on the confiscated goods is also set aside.

Order dictated & pronounced in open court on 9.03.2010.

(M. Veeraiyan)
Member (Technical)

Ckp.