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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/3090/2007 – SM[BR] Date 03/05/2010

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant
Vs
M/S SURAJ INDUSTRIES LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 477 / 2010 –SM[BR] dated 28.4.2010 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 SURAJ INDUSTRIES LTD
   SANSARPUR TERRACE, KANGRA(HP)
2. Adv. / Consult SHRI K.K. ANAND ADV.
   A-5, BASMENT LAJPAT NAGAR-III,
   NEW DELHI
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. Office Copy
14. Guard file
15. TAXINAONLINE.COM PVT.LTD. UNIT NO.1, 2ND FLOOR,VASANT ARCADE, NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI-70.

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-IV

SINGLE MEMBER BENCH

Date of hearing/decision: 28.4.2010

Central Excise Appeal No.3090 of 2007-SM

Arising out of the order in appeal No.215/CE/CHD/2007 dated 28.6.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 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

C.C.E.,Chandigarh .... Appellant

Vs.

M/s Suraj Industries Ltd. .... Respondent

Appearance:

Shri V.K. Saxena, Authorised Departmental Representative (Jt.CDR) for the Revenue and Shri J. Mahajan, Advocate for the appellant

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. 477/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of Commissioner (Appeals) No. 215/CE/CHD/2007 dated 28.6.2007 by which the Commissioner (Appeals) reduced the penalty from Rs.1,08,544/- to Rs.50,000/-.

2. Heard both sides.

3. The relevant facts, in brief, are that the respondents were manufacturing vegetable product falling under sub-heading 1504.00 and were availing exemption in terms of Notification No.2/94 dated 1.3.94.

There was a change in the Notification with effect from 23.7.96 by which soap stocks used captively became dutiable, though the final products continued to be exempted. It is the claim of the respondent that they were under a bona fide belief that inasmuch as the vegetable product was exempt, the soap stocks which was an intermediate producdt was also exempted. The original authority imposed penalty of Rs.1,08,544/- equal to the duty involved on such clearances relating to the period 23.7.96 to 31.3.97. On appeal, the Commissioner (Appeals) reduced the penalty to Rs.50,000/-.

4. Learned Jt.CDR reiterates the grounds of appeal.

5. Learned Advocate for the respondents submits that they were availing the exemption for the final product and they were under bona fide belief that the soap stocks which were by-product was also exempted. He submits that no penalty at all is imposable as the Commissioner (Appeals) has clearly held that mens rea is absent.

6. I have carefully considered the submissions from both sides. The demand of duty relates to the period from 23.7.96 to 31.3.97. The provisions relating to the mandatory penalty under Section 11AC came into statute with effect from 28.9.96. Further, the Commissioner (Appeals) has clearly held that there is no mens rea involved. The submission of the learned Advocate for the respondents that no penalty at all is imposable cannot be considered as they have neither filed any appeal nor filed any cross-objection challenging the said penalty. In the given facts and circumstances of the case, penalty under Section 11AC is not justified. That being the case, the reduction of penalty by the Commissioner (Appeals) from Rs.1,08,544/- to Rs.50,000/- cannot be held as unreasonable. In the appeal memoranda, no facts have been disclosed which can upset the finding of the Commissioner (Appeals).

7. In view of the above, the appeal by the Department is rejected.

(M. Veeraiyan)
Technical Member

scd/