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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/1389/2008 – SM[BR] Date 17/05/2010

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

To :
C.C.E. DELHI I

C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI I Appellant

Vs

M/S KALON ENGINEERS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 533 / 2010 –SM[BR] dated 21.4.2010 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 KALON ENGINEERS PVT. LTD.

14, SFS, DSIDC INDUSTRIAL COMPLEX,ROHTAK ROAD, NANGLOI,NEW DELHI.

2. Adv. / Consult

NONE;---------------

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 TAXINDIAONLINE. COM PVT. LTD. UNIT NO. 1, 2ND FLOOR, VASANT ARCADE, NELSON MANDELA ROAD, VASANT KUNJ , NEW DELHI -110070.

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

Excise Appeal No. 1389 of 2008 (SM)

[Arising out of the Order-in-Appeal No. 23/CE/DLH/2008 dated 01/04/2008 passed by The Commissioner (Appeals), Central Excise, Delhi – I.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 would 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 Department Authorities?	:

CCE, Delhi – I — Appellant

Versus

M/s Kalon Engineers (P) Ltd. — Respondent

Appearance

Shri S.N. Srivastava, Departmental Representative (DR) – for the appellant.

None – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 21/04/2010.

Final Order No. 533/2010-SM(BR) Dated : ____________

Per. Rakesh Kumar :-

The facts giving rise to this appeal by the revenue are, in brief, as under.

1.1 The respondent are engaged in the manufacture of exhaust fans chargeable to Central Excise Duty under heading 8414.40 of the Central Excise Tariff. Audit of the records of the respondent unit was conducted by the auditors from the Directorate of Audit, Central Revenue and it was observed by the audit party that the respondent had cleared 5211 kgs. of Copper wire (raw material) in respect of which Cenvat credit amounting to Rs. 1,60,370/- had been taken, without payment of duty during period from December 1999 to March 2000.

1.2 Earlier, the unit had been visited by the Jurisdictional Central Excise officers on 18th December 1998 and checked the stock of raw material and finished goods. The officers found that the raw material – 5211 kgs. of copper wire, 4188.3 kgs. of Aluminium ingots and C.R. Strips weighing 23460 kgs. in respect of which, Cenvat credit amounting to Rs. 2,19,036/- had been taken, were short and appeared to have been removed clandestinely without payment of duty. The respondent voluntarily debited the duty of Rs. 2,19,036/- including the duty in respect of 5211 kgs. of copper wire. Subsequently a show cause notice dated 9th August 1999 was issued for confirmation of the duty demand of Rs. 2,19,036/- alongwith interest and imposition of penalty, which was adjudicated by the Joint Commissioner vide order-in-original No. 1/2000 dated 17th January 2000 by which the duty demand of Rs. 2,19,036/- was confirmed alongwith interest and an equal amount deposited was appropriately and beside this, penalty of equal amount was also imposed under Rule 173Q readwith Section 11AC. The respondent filed an appeal before the Commissioner (Appeals) and the Commissioner (Appeals) vide order-in-appeal dated 25th March 2003 upheld the order-in-original. The respondent thereafter filed an appeal before the Tribunal and the Tribunal ordered vide final order No. A/1333/03-NB dated 20th October 2003 set aside the penalty of Rs. 2,19,036/- imposed on the appellant company but upheld the duty demand.

1.3 Subsequently a show cause notice dated 12th October 2004 was issued to the respondent for demanding Central Excise Duty amounting to Rs. 1,60,370/- on 5211 kgs. of copper wire alleged to have been removed clandestinely without payment of duty and also for recovery of interest on this duty and imposition of penalty. This show cause notice was issued on the basis of the Audit objection mentioned in para 1.1 above and the same was adjudicated by the Assistant Commissioner vide order-in-original dated 3rd May 2006 by which the duty demand of Rs. 1,60,370/- in respect of shortage of 5211 kgs. of cenvated copper wire was confirmed and penalty of equal amount was imposed on the appellant company under Section 11AC. In the proceedings before the original Adjudicating Authority, though the appellant's advocate Shri Rajesh Jain appeared, no plea was taken that the duty demand in the show cause notice dated 12th October 2004 is already covered by the earlier show cause notice which had been adjudicated vide order-in-original dated 17th January 2000 passed by Joint Commissioner. However, in appeal before the Commissioner (Appeals), the plea of demand being raised in respect of the same removal twice was made and accepting this plea, the Commissioner (Appeals) vide order-in-appeal dated 11th March 2008 set aside the Assistant Commissioner's order dated 3rd May 2006 on the ground that the demand confirmed by the Assistant Commissioner is in respect of the same goods. It is against this order of the Commissioner (Appeals) that the Revenue has come in appeal pleading that the order-in-original dated 3rd May 2006 and the order-in-original dated 17th January 2000 are not in respect of the same goods.

2. None appeared for the respondent, though notice had been issued to them well in time. As per the records of the registry the notice has been received back with the remarks that factory is closed. I find that on earlier occasions also, when the matter had come up for hearing, nobody had turned up and the hearing notices had been returned with the postal authority's remarks that the factory is closed. In view of this, there is no option but to take up this matter for decision ex-parte, so far as the respondent are concerned.

2.1 Shri S.N. Srivastava, the learned Departmental Representative, reiterating the grounds of appeal in the Revenue's appeal pleaded that the proceedings in this case which had been decided at the original level by the Assistant Commissioner vide order-in-original dated 3rd May 2006 and the proceedings which had been decided at the original level vide order-in-original dated 17th January 2000 passed by the Joint Commissioner are in respect of different goods and the Commissioner (Appeals) has wrongly treated the two proceedings as being in respect of the same goods.

3. I find that while the Commissioner (Appeals) has set aside the Assistant Commissioner's order only on the ground that the which demand has been made in respect of the same goods twice, this plea had neither been made before the original Adjudicating Authority nor has been considered. In view of this, the impugned order is set aside and the matter is remanded to the original Adjudicating Authority for denovo decision of this matter after considering the department's plea and ascertaining as to whether this is a case of the demand being raised twice in respect of the same goods. The Revenue's appeal is allowed by remand.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

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