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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1120/2005 - EX[DB]

Date 27/08/2010

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

To :
RAJEEV MARIDA, DIRECTOR M/S MARDIA STEEL LTD,
5&6, LIBERTY COMPLEX, MR ST. XAVIER'S LADIES HOSTEL, SWASTIK CHAR RASTA, NAVRANGPURA, AHMEDABAD
RAJEEV MARIDA, DIRECTOR

Appellant

Vs

Respondent

C.C.E. INDORE

I am directed to transmit herewith a certified copy of **Final order No. 629/ 2010 EX[DB]** dated 17-8-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE (M.P.) 452001
2. Adv. / Consult SH. R.S. DINKAR, 302, MANGAL MURTI, AHMEDABAD
3. C.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. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. HON'BLE PRESIDENT

Assistant Registrar
(Excise 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. I

DATE OF HEARING : 17/08/2010.
DATE OF DECISION : 17/08/2010.

Excise Appeal No. 1120 of 2005

[Arising out of the Order-in-Original No. 87/Commr/CEX/IND/2004 dated 21/12/2004 passed by The Commissioner, Central Excise & Customs, Indore.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
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?	:	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether their Lordships wish to see the fair copy of the order?	:	do
4.	Whether order is to be circulated to the Department Authorities?	:	Y

Rajeev Mardia]
Former Chairman & M.D. of]
M/s Mardia Steel Limited] Appellants

Versus

CCE, Indore Respondent

Appearance

None – for the Appellants.

Shri Sunil Kumar, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. 629/10-EX Dated : ______________

Per. Justice R.M.S. Khandeparkar :-

None present for the appellants and Shri Sunil Kumar, learned DR present for the respondent. The letter dated 20th July 2010 received from the appellants does not disclose any justifiable ground for adjournment of the matter. The appellants was clearly informed about the matter having been fixed for hearing today and notice in this regard was received by the appellants being notice dated 23rd June 2010 and definitely prior to 20th July 2010. It is the appellant's own appeal and question of Tribunal furnishing additional copy of the appeal to the appellants and on that ground question of granting adjournment does not arise. Request for adjournment of the matter therefore is rejected.

2. We have heard learned DR and with his assistance, we have perused the records.

3. This appeal arises from the order dated 21st December 2004 passed by the Commissioner, Indore to the extent it relates to the imposition of penalty of Rs. 1,00,000/- against the appellants herein.

4. On perusal of the appeal, it is apparent that the order is sought to be challenged essentially on two grounds, firstly, that the appeal filed by the company against the confirmation of demand standing before the Hon'ble Supreme Court and secondly, that no penalty could have been levied under Rule 209A of the Central Excise Rules, 1944 unless there was finding to the effect that the appellants either knew or had reason to believe that the goods were liable to confiscation under the Act or the Rules made thereunder.

5. The memo of appeal disclosed that the appeal before the Apex Court was filed in the year 2003, but there was no stay granted in the matter and secondly the matter which was pending before the Commissioner was disposed of by the said order dated 21st December 2004. Even the impugned order nowhere discloses that the company had filed appeal against the order passed by the CEGAT against which the matter was remanded to the Commissioner. In those circumstances, no fault can be found with the order passed by the Commissioner, in terms of remand of the matter.

6. As regards the second ground of challenge, bare perusal of the impugned order and in particular later portion of para 30 of the impugned order clearly discloses a finding regarding knowledge of the appellants that the goods were liable for confiscation has been arrived at after analysing the materials on record. Para 30 of the impugned order reads thus :-

"30. As regards submission of the Noticee No. 2 that penalty is proposed to be imposed upon him merely because he happen to be one of the director of the said company and his statement was recorded, is not correct because when repeated and constant efforts made with Noticee No. 1 for supply of information which amongst other also includes information about transportation charges, has failed, Shri Rajeev Mardia vide letter after apprising the factual position was requested to supply information, but no information was made available. Subsequently summons dated 26-6-96 issued to him also not resulted in positive action on his part. The information on freight amount was not furnished by parties till it was again specifically asked during personal hearing. This by itself confirms that Noticee No. 2 – Shri Rajeev Mardia had also abeted and acted in furtherance of the act of the Noticee No. 1 about violation of the various provisions of the Act and Rules. This act on his part is sufficient for his penal action under erstwhile Rule 209A of the Central Excise Rules, 1944. Shri Rajeev Mardia in the capacity of his placement with Noticee No. 1 cannot claim that he was not aware about the fact that there was no sales to independent buyer at factory gate and goods sold at depot were charges to higher price as compared to assessable value, resulting in failure to discharge proper duty on the goods, a violation of erstwhile Rule 173F. Therefore, Noticee No. 2 has every knowledge that goods are liable for confiscation also. For this reason he is rightly deserves for penal action under erstwhile rule 209A of Central Excise Rules, 1944."

7. Perusal of the memo of appeal does not disclose any ground of any other nature having been raised in the matter to

assail the impugned order. In the circumstances the appeal deserves to be dismissed and is accordingly hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK