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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/1130/2009 – SM[BR] Date 07/12/2010

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

To :
C.C.E BHOPAL

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

Vs

M/S L.B. & SONS, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1373 / 2010-SM[BR] dated 1.12.2010 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 L.B. & SONS,

PANT NAGAR, KAKA GANJ, SAGAR (M.P.)
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 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

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1130 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 16/BPL/2009 dated 29.1.2009 passed by the Commissioner of Customs & Central Excise (Appeals), Bhopal]

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should 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? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : No

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Commissioner of Central Excise
Bhopal — Appellants

Vs.

M/s. L.B. & Sons — Respondent

Appearance:

Shri Anil Khanna, SDR for the Appellants
None for the Respondent

Date of Hearing/decision : 1.12.2010

Final **ORAL ORDER NO. 1373/2010 SM(BR)**

Per M. Veeraiyan:

This is an appeal by the department against the order of the Commissioner (Appeals) No. 16/BPL/2009 dated 29.1.09 which was passed in pursuance of remand order No. 128-129/08 SM(BR) dated 6.12.07.

2. Heard the learned SDR. None appeared for the respondents.

3. The original authority confirmed the demand of duty with reference to Invoice No. 7 dated 24.12.01 which was recovered from the premises of respondents on 16.10.02. It was held that there was already an invoice with the same number dated 5.12.01 which was accounted for. Therefore, it was held that invoice No. 7 dated 24.12.01 could have been issued from a parallel invoice book and the same represented clearance of unaccounted goods and accordingly demand of Rs.59,486/- was confirmed and equal amount was imposed as penalty. Commissioner (Appeals) has set aside the demand.

4. Learned SDR reiterates the grounds of appeal and the findings and reasoning of the order of the original authority.

5. I have carefully considered the submissions and perused the records. The relevant portion of the finding of the Commissioner (Appeals) on the issue of demand of duty on the disputed invoices is reproduced below:-

> "However, I have reservations with regard to the imposition of duty of Rs.59,486/- on biris purported to have been cleared under Invoice No. 7/24.01.2007. The Appellant has stated that this is their commercial invoice, but this aspect has not been verified by the lower authority. In the said invoice the name of the buyer is distinctly appearing as "Ram Swaroop Gulab Chand, Sitapur". However no investigation were conducted at the buyers end to ascertain the facts. I find that in

the referred Final Order-in-Appeal No. 92-93/CE/BPL/2005 dated 29.09.2005, the name of the same buyer i.e. Ram Swaroop Gulab Chand, Sitapur, has appeared and detailed investigations were conducted at their end, which is missing in this case. The demand of duty of Rs.59,486/- on account of invoice No. 7/24.1.2001 is thus based on presumptions and assumptions and is therefore, not sustained. As a consequence, imposition of penalty of Rs.59,486/- is also set aside. "

6. It has not been shown that the investigating officers have specifically identified the person in whose custody (cupboard from which) the said invoice was recovered. It has also not been shown that investigating officers have taken any efforts to question the buyers mentioned in the said invoices. Under these circumstances, the Commissioner (Appeals) accepted the version of the respondent that invoice No.7 dated 24.12.01 was a commercial invoice and not excise invoice. In the absence of investigation, mere finding of the original authority that need for issue of commercial invoice is not disclosed, is not sufficient to fasten duty liability holding that there was clandestine removal. There is no material revealed in the grounds of appeal which can upset the finding of the fact by the Commissioner (Appeals).

7. The appeal by the department is rejected.

(M. Veeraiyan)
Member(Technical)

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