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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/785 /2008 – SM[BR] Date 29/01/2010

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S A.V.VALVES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 160 / 2010 –SM[BR] dated 21.1.2010 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 A.V.VALVES LTD.
   60, INDUSTRIAL ESTATE,NUNHAI,AGRA.
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ 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 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)

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

Excise Appeal No. 785 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 20/ CE/APPL/KNP/2008 dated 29.1.2008 passed by Commissioner of Customs & Central Excise (Appeals), Kanpur]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, 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 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

Commissioner of Central Excise
Kanpur — Appellants

Vs.

M/s. A.V. Valves Ltd. — Respondent

Appearance:

Shri S.K. Bhaskar, DR for the Appellants
Shri Manish Saharan for the Respondent

Date of Hearing/decision : 21.1.2010

ORAL ORDER NO. 60/2010 SM(BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of Commissioner (Appeals) No. dated 29.1.08. The matter is before the Tribunal for the second time having been remanded earlier by Tribunal's Final order No. 490/07-SM(BR) dated 18.2.07.

2. The relevant facts, in brief, are that on20.12.01, when the officers visited the factory premises of the respondent company, they found shortage of finished goods valued at Rs.3,44,400/- and also shortage of inputs valued ~~were~~ Rs.3,79,990/-. The Director of the respondent company in his statement dated 20.12.01 admitted the shortage and stated that the same occurred due to absence of proper accounting staff deputed for the purpose who could not make the proper accountal of production and clearances made by them during past 15 days. He also submitted that sometimes they receive inputs in lesser quantity compared to the quantities mentioned in the invoices. However, he agreed to pay the duty involved and accordingly, duty amounting to Rs. 1,15,902/- involved on the short found finished goods and the raw materials stands paid. The liability to duty on the goods found short are not being disputed by the respondents. Show cause notice dated 25.7.02 was issued for the limited purpose of imposing penalty under Rule 25 of Central Excise Rules, 2001 read with Rule 30 of Cenvat Credit Rules, 2002. The original authority imposed a penalty of Rs.30,000/- under Rule 25 of the Central Excise Rules, 2001. Commissioner (Appeals), by the impugned order, set aside the penalty holding that in the absence of any corroborative evidence in cases of shortage in the stock of goods found in a

factory, it was not clear whether the same was on account of clandestine removal or on account of wrong accounting.

3. Learned DR reiterates the grounds of appeal and seeks setting aside the order of the Commissioner (Appeals) and restoring the order of original authority.

4. Learned Advocate for the respondents submits that it was only a case of improper accounting and as they were not able to explain the shortage, they have paid the duty. He submits that no penalty is imposable and therefore, he seeks upholding of the order of the Commissioner (Appeals).

5. I have carefully considered the submissions of both sides. It is a clear case where both excisable goods and finished goods were found short on the date of visit of the officers. The Director of the Company has clearly admitted that the records were not maintained for about 15 days. In view of the above, improper maintenance of accounts are clearly established. In view of the above, some penalty for improper maintenance of accounts is warranted. Therefore, the order of the Commissioner (Appeals) in totally setting aside the penalty is not justified.

6. In the light of the above, the order of the Commissioner (Appeals) is set aside and while restoring the order of the original authority, penalty of Rs. 30,000/- under Rule 25 is modified and the same is converted as penalty under Rule 27 and reduced to Rs. 5,000/- (Rupees Five thousand only).

7. The appeal is disposed of on the above terms.

(M. Veeraiyan)
Member(Technical)

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