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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/68 /2009 – SM[BR] Date 24/09/2010

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

To :
M/S EMSON GEARS LTD.

D-42, PHASE-V, FOCAL POINT, LUDHIANA.

M/S EMSON GEARS LTD. Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1044 / 2010-SM[BR] dated 17.9.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. LUDHIANA
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
   MR.G.S.BHANGOO
   H.NO. 5, SECTOR-10A, CHANDIGARH.

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No.68/2009-SM

(Arising out of order in appeal No.330-331/cE/Appl/Ldh/08 dated 30.9.08 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

Date of Hearing:17.9.2010

For approval and signature:

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

1. Whether Press Reporters may be allowed to see Under 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? 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

M/s Emson Gears Ltd — Appellants

Vs

CCE, Ludhiana — Respondent

Appeared for the Appellant: Shri Vikrant Kackria, Advocate
Appeared for the Respondent: Shri Anil Khanna, SDR

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

Final ORDER 1044/2010 SM (Br)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) dated 30.9.2008.

2. Heard both sides.

3. On 13.9.2003, the Central Excise officers visited the factory premises of the appellants and on verification of stock, they found shortage of goods valued at Rs.4,09,385/-. The Director of the appellant company was present. He admitted the shortage of finished goods and stated that they had sold the finished goods found short without payment of duty and without cover of Central Excise invoice. After admitting removal of goods, an amount of Rs.65,501/- was paid on 19.9.03. The original authority confirmed the demand of duty and imposed equal amount of penalty. However, he gave option to pay 25% of the penalty as provided under first proviso to Section 11AC of the Act subject to payment of pending dues. He also imposed penalty of Rs. 15,000/- on Shri Ashok Kumar Dhall, Director. On appeal by the parties, the Commissioner (Appeals) in the first round of litigation set aside the penalty imposed on the company. When the matter came before the Tribunal, the order of the Commissioner (Appeals) was set aside and the matter was remanded to the Commissioner (Appeals) for fresh adjudication. In the de-novo proceedings, he passed impugned order dated 8.10.2008 upholding the order of the original authority.

4. The learned Advocate submits that there was no appeal before the Commissioner (Appeals) by the Director in the second round of litigation. They are contesting the liability to penalty under Section 11AC. At any rate, he seeks concessional penalty in terms of first proviso to Section 11AC. He relies on the decision of the Hon'ble High Court of Delhi in the case of CCE Vs Malbro Appliances Pvt Ltd reported in 2007 (5) STR 256 and decision of the Hon'ble High Court of Punjab

& Haryana dated 11.8.2010 in the case of CCE Vs M/s Gowardhan Knitting Works.

5. The learned SDR submits that the original authority has fairly granted opportunity to appellant to pay the concessional penalty. Since they have not paid the duty involved and 25% penalty within 30 days from the date of receipt of the said order, the concession cannot be extended at this stage.

6. I have carefully considered the submissions from both the sides and perused the record. I find that in the decision in the case of Goverdhan Knitting Works relied upon by the learned Advocate, it has been clearly held that no substantial question of law arises. In the present case, the original authority has fairly given option to pay 25% penalty which was not exercised by them. This is a clear case of admitted shortage which was explained by the Director himself as due to removal of goods without payment of duty and without preparing Central Excise documents. Clearly, it is a case involving ingredients of Section 11AC. The statement of the Director was not retracted and same was followed up by payment of duty within a few days. Further I find that the original authority gave option to pay the reduced penalty which has not been exercised by the appellants after following the conditions stipulated under first and second proviso to section 11AC.

7. In view of the above, I do not find any merit in the appeal and the same is dismissed.

(M. VEERAIYAN)
Technical Member

MPS*