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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/1943/2010 – SM[BR] E / STAY / 1871 /2010-SM[BR] Date 05/10/2010

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

To :
M/S BEC INDUSTRIES,
C-108, MAYAPURI INDL. AREA, PHASE-I, NEW DELHI.

M/S BEC INDUSTRIES, Appellant

Vs

C.C.E. DELHI II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1098 /2010-SM[BR]&S/469/2010 dated 3.9.2010 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. DELHI II
   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult SHRI NAVEEN MULLICK ADV.
   B-388 , MEERA BAGH, NEW DELHI-63.

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. IV

Excise Appeal No. 1943 of 2010-SM(BR)
Excise Stay Application No. 1871 of 2010-SM(BR)

[Arising out of Order-in-Appeal No. 142-143/CE/DLH/2009 dated 31.3.2010 passed by the Commissioner of Central Excise (Appeals), Delhi II.]

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? : 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

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M/s. BEC Industries — Appellants

Vs.

Commissioner of Central Excise
Delhi II — Respondent

Appearance:
Shri Naveen Mullick, Advocate for the Appellants
Shri R.K. Gupta, SDR for the Respondent

Date of Hearing/decision : 3.09.2010

final **ORAL ORDER NO. 1098/2010 SM(BR) & S-469/2010 SM(BR)**

Per M. Veeraiyan:

After hearing both sides for a while on the stay petition, considering the nature of the dispute involved, pre-deposit is waived and the appeal itself is taken up for final disposal.

2. When the officers visited the premises of the appellant on 15.11.08, they found an excess stock of finished goods valued at Rs.22,55,322/-. The Stock taking has been done in the presence of Shri Ajay Mehra, partner and in the presence of independent witnesses. Shri Ajay Mehra in his statement dated 15.11.08 submitted that due to his bad health and shortage of space in the factory, the entire work was handled by illiterate workers and in view of their heavy turnover and position of day to day material handling, the discrepancy has occurred. Further statement was taken on 20.11. 2008 wherein also he admitted the excess stock found and agreed to pay the duty involved. He deposited the duty involved amounting to Rs. 3,25,218/- on 21.11.08. Original authority ordered the confiscation of the goods valued Rs. 22,55,322/- but allowed the same to be redeemed on payment of redemption fine of Rs.5,00,000/-. He also imposed penalty of Rs.3,25,218/- under Rule 25 of section 11AC of the Central Excise Act, 1944. In addition, he imposed a penalty of Rs.One lakh on Shri Ajay Mehra, partner of the appellants company. On appeal by the party, the Commissioner (Appeals) upheld the confiscation but reduced the redemption fine

from Rs. Five lakh to Rs. 3 lakh and imposed a penalty of Rs.50,000/- on the appellant company. He also set aside the penalty on the partner.

3. Learned advocate submits that excess found goods were under different stages of manufacturing and they required certain processes like threading, socket fixing before they could be considered as having reached RG I stage. In fact they have written to the department way back in 1994 that they would be entering in RG I only after these processes were undertaken. Therefore, there was no actual excess goods found as the said goods were yet to reach the stage of entry in RG I register. He also made alternative submission that entire goods were lying in the factory and the question of clandestine removal did not arise and the penalty under section 11 AC was not justified. In view of the above, he seeks setting aside the confiscation and the penalty.

4. Learned SDR submits that goods found in excess were substantial. The same was admitted by the Managing partner in his statement dated 15.11.08 and subsequently reiterated in his statement dated 20.11.08. This was followed up by payment of entire duty involved on 21.11.08. The claim that the goods had not reached the stage of entry in RG I has been taken up for the first time before the Commissioner (Appeals) and it is clearly an after-thought.

5. I have considered the submissions from both the sides and perused the records. The stock taking undisputedly has been done in the presence of partner and independent witnesses. Shri Ajay Mehra partner has clearly admitted the excess of finished goods in his statements dated 15.11.08 and

20.11.08. It is not claimed that Managing partner has retracted these two statements. Therefore, the charge of non-accountal of finished goods is clearly established. The finding of the lower authority in this regard does not call for interference. While the original authority held that the goods were meant for clandestine removal and imposed equal amount of duty involved as penalty, Commissioner (Appeals) has substantially reduced it to Rs. 50,000/- . It is noticed that it is a case of admitted excess of finished goods in excess of what was entered in the statutory records. The explanation given for the first time before the Commissioner (Appeals) is clearly an after-thought and contrary to the submissions given by the partner in his statements on 15.11.08 and 20.11.98. The confiscation is therefore, justified. However, the presumption that the goods are meant for clandestine removal cannot be upheld.

6. Taking the entire facts and circumstances of the case, while upholding the confiscation, I reduce the redemption fine from Rs. 3,00,000/- to Rs. 1,50,000/- (Rupees One lakh and fifty thousand only). The penalty as sustained by the Commissioner (Appeals) is not excessive and therefore, the same is not interfered with.

7. The appeal is disposed of as above. Stay petition is also disposed of.

(M. Veeraiyan)
Member(Technical)

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