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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/1957/2008 – SM[BR] Date 18/10/2010

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

To :
M/S J.D.INDUSTRIES (INDIA) LTD
SP-288-298, RIICO INDUSTRIAL AREA,
BHIWADI(RAJ)

M/S J.D.INDUSTRIES (INDIA) LTD — Appellant

Vs

C.C.E. JAIPUR I — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1123 / 2010-SM[BR] dated 7.10.2010 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. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.BHASIN SETHI & ASSICIATE
   401,SATYAM CINEMA BUILDING,RANJEET NAGAR,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. 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 (Harvana)
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,

West Block No. 2, R.K. Puram, New Delhi

COURT No. II

CENTRAL EXCISE APPEAL NO. 1957/08-SM

(Arising out of Order-in-Appeal No.126(RKS)CE/JPR-I/2008 dated 9.6.2008 passed by the Commissioner (Appeals), Central Excise, Jaipur-I, Jaipur)

M/s. J.D. Industries (India) Ltd., Appellants
Reptd. by Shri V.R. Sethi, Advocate

Versus

CCE, Jaipur-I Respondent
Rept. By Shri R.K. Gupta, SDR

Date of Hearing/decision: 7th October, 2010

Coram: Hon'ble Shri D.N. Panda, Judicial Member;

FINAL ORDER NO. 1123/2010 SM(BR) **DATED**

Per D.N. Panda:

Adjudication record was called for to examine whether Cenvat credit on the goods input relating to equivalent finished found excess in the course of investigation was availed.

2. Today, learned D.R. has brought the adjudication record and is able to estimate that the Cenvat credit that is attributable to the goods found excess may be roughly Rs. 71,642/-. According to the record the goods found in

excess was to the tune of Rs. 6,31,076/-. When the excess goods were found during investigation, the appellants faced consequence of confiscation of excess stock with option to redeem the same on payment of redemption fine of Rs. 1,60,000/-. So also there was penalty of Rs. 50,000/-.

3. Learned Counsel appearing today submits that the appellants are prepared to rlease the stock paying reasonable redemption fine and penalty since duty becomes payable at the time of clearance.

4. Learned D.R. supports the order of Authority below and objects for interference to the appellate order passed by the learned Commissioner (Appeals).

5. Heard both sides and perused the record.

6. This appeal has come on restoration for no evidence of pre-deposit placed on the date of compliance. The controversy was on established fact that there was excess stock of goods found during investigation which were not accounted for. Learned adjudicating authority recorded that the assessee was maintaining record of raw material as well finished goods. But on physical verification on 6.10.2006 14.450 M.T. of coils were found in excess. So

also there was 6.581 M.T. M.S. pipe found in excess. Value of both the goods so found was aggregated to be Rs. 6,31,076/-. When value of the goods was so, redemption fine of Rs. 1,60,000/- imposed appears to be disproportionate for no reason recorded for such imposition. Also penalty was imposed in the order of adjudication.

7. While confirming the adjudication, learned appellate authority had not assigned any reason to agree with the adjudication conclusion. To resolve the dispute, in the fitness of circumstances, it will be proper to impose redemption fine of Rs. 50,000/- since Cenvat credit amount on the goods confiscated may be to the tune of Rs. 71,642/- approximately as has been roughly calculated by the learned D.R.

8. So far as penalty of Rs. 50,000/- is concerned, it appears that the penalty resulted out of application of Rule 25 of the Central Excise Rules, 2002. It is also without assigning any reason in the order of adjudication for the quantum of levy of penalty. Learned Counsel submits that to resolve the dispute the appellants shall forgo Rs. 20,000/- already deposited at stay stage

towards penalty. In view of the cooperative attitude of the appellant it would be proper to amicably resolve the dispute to build public confidence on law. Accordingly penalty is hereby ordered to be restricted to Rs. 20,000/- only.

9. In the result redemption fine is reduced to Rs. 50,000/- and penalty is reduced to Rs. 20,000/- on the above terms. The appellate order is accordingly modified to the above extent allowing appeal of appellant partly.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK