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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/226 /2006 - EX[DB]

Date 12/01/2010

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

To :
M/S OOSYPINE MAR-PACK LTD.
NH-8, VILLAGE PIPLA, BEAWAR, DISTT. AJMER

M/S OOSYPINE MAR-PACK LTD. Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 11/ 2010 EX[DB]** dated 06-1-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult SH. ATUL GUPTA, C.S. B-1/1289-A, VASANTKUNJ, N. DELHI-70
3. C.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
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Excise Appeal No.226 of 2006

(Arsing out of Order-in-Appeal No.595 (HKS) CE/JPR-II/2005 31.10.2005 dated 22.12.2006 passed by the Commissioner of Central Excise (Appeals), Jaipur)

Date of Hearing: 09.12.2009
Date of Decision: 09.12.2009

M/s.Oosypine Mar-Pack Ltd. Appellant

Vs.

CCE, Jaipur Respondent

Present for the Appellant: Shri Atul Gupta,CS
Present for the Respondent: Shri Mahesh Rastogi, JDR

Coram: Hon'ble Mr.M.Veeraiyan, Technical Member
Hon'ble Mr. D.N.Panda, Judicial Member

FINAL **ORDER NO.** 11 / 2010 – EX

PER: D.N.PANDA

The appellant being aggrieved by order passed by Commissioner(Appeals) on 27.10.2005 upholding order of adjudication as to levy of central excise duty of Rs.1,34,707/- under Section 11D read with Section 11A of the Central Excise Act, 1944 (hereinafter referred to as the "Act") has come in appeal to Tribunal. Ld.Adjudicating Authority held that the central excise duty was collected by the appellant on sale tax considering that to be part of sale price. Such observation was made by him when he found that sale price inclusive of sale tax was considered by the appellant as the assessable value for chargeability of duty. Also the ld.Adjudicating Authority found that the amount so collected by the buyer giving rise to liability was discharged from cenvat credit account. Such factual position enabled him to construe that Section 11D was against the appellant. Considering averment of assessee, learned Appellate Authority was of the same view and charge framed against the appellant in the show cause notice was upheld.

2. Ld.Representative for the appellant submits that the money collected from the public has been paid to the Treasury as liability through cenvat credit account assuming that central excise duty collected on sale tax element comprised in assessable value was also dischargeable through cenvat credit account. There was nothing retained by the appellant for levy of central excise duty of Rs.1,34,707/- under section 11D, Since there was no retention of any amount, adjudication proceeding is vitiated.

3. Ld.JDR on the other hand opposes above submissions of assessee on the ground that duty collected on sale tax comprised in the assessable value cannot be discharged through cenvat credit account because that should be deposited to the Treasury in terms of Section 11D of the Act. Accordingly, adjudication and appellate order are in consonance with law relating to payment of duty.

4. Heard both sides and perused the records.

5. Thorough exercise of the matter was done to know factual position of the matter till that reached first appeal level. Although premises of proceeding was invoking Section 11D of the Act, element of such section found to be absent in the case. Nothing could be made out by both authorities below to demonstrate that the appellant retained itself the amount of Rs.1,34,707/- calling for further recovery. In absence of retention of public money by the appellant, section 11D is not invokable. In our opinion, the facts and circumstances of the case has only called for to decide applicability of Section 11D of the Act instead of deciding

modality of discharge of the duty liability. Therefore we only hold that section 11D is not invokable on the facts and circumstances of the case for which the appellant shall succeed and the appeal is allowed.

6. The appeal is allowed with consequential relief according to law.

(M.VEERAIYAN)
TECHNIAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

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