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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

Date 25/02/2010

Appeal No. E/43 /2006,56 /2006 - EX[DB]

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

Appellant

C.C.E. CHANDIGARH

Vs

Respondent

KAMLA DIALS & DEVICES LTD.

I am directed to transmit herewith a certified copy of **Final order No.** 91-92/ 2010 EX[DB] dated 18-2-2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   KAMLA DIALS & DEVICES LTD.
   HAIBATPUR ROAD, DERABASSI.
2. Adv. / Consult
   MR.JOY KUMAR
   FLAT NO 261/1,SEC 45-A,CHANDIGARH.
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
NEW DELHI

COURT NO. II

Excise Appeal No. 43 of 2006

(Arising out of Order-in-Appeal No. 367/CE/CHD/2005 dated 30.9.2005 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

CCE, Chandigarh — Appellant

Vs.

M/s Kamla Dials & Devices Ltd. — Respondent

Excise Appeal No. 56 of 2006

(Arising out of Order-in-Appeal No. 367/CE/CHD/2005 dated 11.10.2005 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

M/s Kamla Dials & Devices Ltd. — Appellant

Vs.

CCE, Chandigarh — Respondent

Date of Hearing: 6.1.2010

Appearance :

Appeared for Appellant - Shri S.R. Meena, DR
Appeared for Respondent - None

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

FINAL Order No. 91-92/2010-EX dated............

Per D.N. Panda:

Both sides are in Appeal today against the same order dated 30th Sept. 05 passed by ld. Commissioner (Appeals), Chandigarh.

The Assessee is in Appeal in Appeal case No. E/56/06 while Revenue's Appeal is registered as E/43/06. The matter came up before the Bench on 4.8.09. There was a request by the Assessee for adjournment of the matter. Accordingly that was adjourned to 8.9.09. Although the matter was listed on 6.10.09 and 5.11.09, that did not reach. Therefore the matter was again in the list today. But none present for the Assessee. Looking at the gravity to the demand to be very small and also the issue involved is not much complicated in nature, it was considered proper to dispose both the matters commonly by this order with the assistance of Revenue.

2. Ld. DR Shri Meena assisting the Bench submits that there were two types of transactions that was subject matter of Adjudication. First one is transfer of the goods to the sister concern by the Assessee involving duty element of Rs.51,301/-. The second transaction related to export of samples to overseas buyers involving duty element of Rs.45,670/-. Both the duty liability arose for the under valuation of assessable value made by the assessee in respect of both the transactions. There was violation of the Valuation Rules. Therefore Adjudicating Authority imposed demand of Rs.96,971/- in aggregate (Rs.51,301/- + Rs. 45,670/-) toward duty invoking Section 11A of Central Excise Act, 1944. However, penalty of Rs.45,670/- was only imposed invoking Rule 25 of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944.

3. According to Revenue when the matter was agitated before the ld. Commissioner (Appeals), although he confirmed the duty element in the case, he granted concession on penalty in toto. Revenue being aggrieved by that order has come in Appeal for imposition of penalty.

4. Heard Revenue for some time. We enquired into the allegation made in the show cause notice. We could find that the show cause notice had proposed levy of penalty under Rule 25 in respect of allegation made in the show cause notice. We are dissatisfied with the manner the orders have been passed by both the Authorities below. We notice that the ld. Adjudicating Authority has disregarded to the mandate of the statute relating to levy of penalty and he has brushed aside the proposal in show cause notice in respect of the allegations. There is no reason stated in order in original by learned Adjudicating Authority as to why he did not levy penalty against the transaction related to transfer to sister concern involving duty element of Rs.51,301/- while show cause notice proposed such levy. When we noticed such a feature, we carefully examined the Appellate order. Also we found that under valuation was the basic allegation. AR-4 document was not subject matter to consider under-valuation in respect of export. The very basis of valuation should have been looked into by ld. Appellate Authority before the goods entered into the nature of transaction and the

character it assumed upon being removed from the factory. Such aspect has not at all been examined.

3. Once we noticed above feature in both the cases, it would be proper to send the matter back to the ld. Commissioner (Appeals) although we hesitate to remand matters in second Appeal. But this is a peculiar case where there was very casual approach made by the Revenue Authorities. Therefore we send back the matter with the aforesaid concern being expressed and re-examine the entire issue on the basis of allegation, manner of valuation of goods in both the transactions, applicability of appropriate rule and law in respect of valuation, the allegation made in show cause notice and the consequences that shall flow, by the learned first Appellate Authority. If his order speaks on all these aspects with reason, that only shall stand scrutiny by higher Authorities. We expect that there should not be any failure to safeguard interest of justice even if Revenue element involved is very small while the principles of law cannot be given burrial. With unhappiness, we remand the matter back to the ld. Appellate Authority to examine the issue afresh and pass appropriate order.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM