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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/1941/2008 – SM[BR] Date 10/11/2010

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

To :
M/S SHREE ASHOK KUMAR MANIBAHI PATEL & CO.
BRANCH-GOSHALPUR, JABALPUR (M.P.)
PRESENTLY JIWAJI CHOWK BADA, LASHKAR
GWALIOR-474001.

M/S SHREE ASHOK KUMAR MANIBAHI PATEL & CO. Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1201 / 2010-SM[BR] dated 21.10.2010 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 BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
MR.ARYA BHATT ADVOCATE (HIGH COURT)
503, SHAHI NAKA GARHA WARD, JABALPUR (M.P.)
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. III

Excise Appeal No. 1941 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 120/BPL/2008 dated 31.7.2008 passed by the Commissioner of Central Excise (Appeals), Bhopal.]

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

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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? :

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether Their Lordships wish to see the fair copy of the Order? :

4. Whether Order is to be circulated to the Departmental authorities? :

M/s. Shree Ashok Kumar Manibhai Patel & Co. — Appellants

Vs.

Commissioner of Central Excise Bhopal, MP — Respondent

Appearance: Shri Arya Bhatt, Advocate for the Appellants
Shri K. P.Singh, SDR for the Respondent

Date of Hearing/decision : 21.10.2010

Final **ORAL ORDER NO. 1201/2010 SM(BR)**

Per Ashok Jindal:

By the impugned order, penalty under Rule 25(1)(a) of Central Excise Rules, 2002 was confirmed to the tune of Rs.2,00,000/- against the appellants.

2. The facts of the case are that the appellants during the period from July, 2006 to January, 2007 have delayed the payment of duty along with interest beyond the period of 30 days. Accordingly, a show cause notice was issued for contravention of Rule 8(3A) of the Central Excise Rules, 2002 proposing penalty under Rule 25 against the appellants. The adjudicating authority confirmed the duty equivalent to penalty. On appeal before the Commissioner (Appeals), the penalty under Rule 25 was reduced to Rs. 2 lakhs. Aggrieved from the imposition of penalty, the appellant is in appeal before this Tribunal.

3. Learned Advocate for the appellants submitted that in this case, there is no allegation against the appellants that they have delayed the payment with reason of fraud, collusion, suppression of facts, wilful mis-statement or contravention of any law with intent to evade payment of duty. Hence, no penalty is leviable on the appellant. He also relied upon the decision of this Tribunal in the case of Rajarathnam Matches Pvt. Ltd. vs. CCE, Tirunelveli reported as [2008 (231) ELT 667 (Tri-Chennai)] wherein this Tribunal has held that when the entire duty paid before issue of show cause notice and

there is no finding that appellants dealt with the goods with intent to evade payment of duty, penalty is not sustainable.

4. On the other hand, learned DR submitted that it is an admitted fact that the appellant has violated the provisions of law and to impose penalty, mens area is not required as held in the case of Dharmendra Textile & Processors by the Hon'ble Apex Court.

5. Heard both sides.

6. On careful examination of submissions by both sides, I find that it is an admitted fact that appellants has not paid the duty in time as prescribed in the law. Hence, they have contravened the provisions of law for which they are liable for penal action. As the penalty has been imposed under Rule 25 of the Central Excise Rules, 2002, the penalty under Rule 25 is leviable subject to the provisions of section 11AC and in this case, there is no allegation against the appellants that they have not paid the duty with any malafide intentions. Hence, the penalty under Rule 25 is not leviable against the appellants. As the appellants have contravened the provisions of law, they are liable for penalty under Rule 27 of the Central Excise Rules, 2002. Accordingly, penalty under Rule 27 of Central Excise Rules, 2002 is confirmed to the tune of Rs.2,000/- for each default.

6. With these observations, the appeal is partly allowed.

(Ashok Jindal)
Member(Judicial)

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