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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/629 /2009 – SM[BR] Date 10/11/2010

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

To :
M/S CHARU PAPERS LTD.

8TH KM STONE, MORADABAD ROAD, VILL.
DHARAMPUR, DISTT. BIJNOUR (U.P.)

M/S CHARU PAPERS LTD. Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1211 / 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. MEERUT I

EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005.

2. Adv. / Consult

MR.RAJESH CHHIBBER

FA/9, NEW KAVI NAGAR, GHAZIABAD

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. 629 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 193/CE/MRT-I/2008 dated 31.10.2008 passed by the Commissioner of Central Excise (Appeals), Meerut I .]

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. Charu Papers Ltd. — Appellants

Vs.

Commissioner of Central Excise Meerut — Respondent

Appearance: Shri Rajesh Chibber, Advocate for the Appellants
Shri S.K. Bhaskar, DR for the Respondent

Date of Hearing/decision : 21.10.2010

Final **ORAL ORDER NO. 1211 / 2010 SM (BR)**

Per Ashok Jindal:

By the impugned order, the demand of Rs.13,40,742/- was confirmed along with interest as applicable and a penalty of Rs.3.5 lakhs under Rule

173Q of the Cenvat Credit Rules, 1944 for contravention of Rule 173G (1) of the Central Excise Rules, 1944.

2. The facts of the case are that the appellants were availing exemption of Central Excise duty on fortnightly basis. Accordingly, they were required to pay duty for the first fortnight by 20th of the current month and for the second fortnight by 5th of following month under Rule 73 G of the Central Excise Rules, 1944. It was found that they did not discharged their duty liability properly in respect of clearances of excisable goods during the period first and second fortnight of October, 2000 to December, 2000, January, 2001 and 1st February, 2001. Accordingly, a show cause notice was issued for contravention of Rule 173 G(1) ibid. The adjudicating authority confirmed the duty on the clearance during the impugned order along with interest on applicable rate and penalty of Rs.3.5 lakhs under Rule 173Q ibid. Same was confirmed by the lower appellate authority.

3. Aggrieved from the said order, the appellant is in appeal before this Tribunal. The learned advocate for the appellant submitted that in this case it is admitted fact that appellant could not pay the duty in time as per the provisions of Rule 173G(1) ibid due to financial crunches. But there is no allegation against the appellant that they have delayed the payment for reasons of fraud, collusion, suppression of facts, wilful mis-statement or contravention of any provision of law with intent to evade payment of duty. In the absence of such allegations, penalty is not leviable on the appellants. To support this contention, he placed reliance on 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 have not paid the duty in time as prescribed under the provisions of law. Hence, they are liable to pay the duty on clearance during that period along with interest and penalty. To support his contention that penalty is imposable, he relied on the decision of Union of India vs. Dharmendra Textile Processors by the Hon'ble Apex Court reported in 2008 (231) ELT 3 (SC) wherein the Hon'ble Apex Court held that mens area is not required to impose penalty.

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. But later on the appellant has paid the duty and interest which is not in dispute. The only dispute before me is whether the penalty on the appellants are leviable or not. If it is leviable what should be the quantum. As it is admitted by the appellants that they have paid the duty with a delay and they have contravened the provisions of law for which they are liable for penal action. As the penalty has been imposed under Rule 173 Q, the provisions of section 11AC are subjected to. As per section 11AC if duty has been evaded by way of fraud, collusion, suppression of facts, wilful mis-statement or any contravention of provisions of law with an intent to

evade payment of duty, penalty is leviable. But from the facts of the case, it is clear that the department has failed to prove whether the duty has been evaded with a reasons of fraud, collusion, suppression of facts, wilful mis-statement or for contravention of provisions of law. Hence, the penalty under Rule 173 Q is not leviable on the appellants as held by this Tribunal in the case of Rajarathnam Matches Pvt. Ltd. vs. CCE, Tirunelveli (supra) wherein it was 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.

7. In the instant case, the appellant has contravened the provisions of law. Hence they are liable for penalty under Rule 210 of Central Excise Rules, 1944. Accordingly penalty under Rule 210 of Central Excise Rules, 1944 is confirmed to the tune of Rs. 10,000/- (Rupees Ten thousand only). As maximum penalty imposable is only Rs. 1,000/-, learned Advocate for the appellant submitted that at the time of stay, the appellants were asked to pay Rs.10,000/- as penalty and the appellant shall not claim for any refund, hence the penalty be confirmed to Rs.10,000/-. Accordingly, the penalty is confirmed with these observations.

8. The appeal is disposed of as above.

(Ashok Jindal)
Member(Judicial)

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