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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. ST/751 - 752 /2010 – SM [BR] Date 11/11/2010

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

To :
C.C.E. MEERUT II

OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI
ROAD, MEERUT (UP)
C.C.E. MEERUT II Appellant

Vs

M/S SANDEEP BOBBINS CO. PVT. LTD., Respondent

I am directed to transmit herewith a certified copy of **Final order No**.1220 – 1221 /2010-SM[BR] dated 27.10.2010 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S SANDEEP BOBBINS CO. PVT. LTD.,

BULANDSHAHAR ROAD, HAPUR, DISTT. GHAZIABAD. (U.P.)

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW 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 (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)

2. M/S SANDEEP BOBBINS CO. PVT. LTD.,
BULANDSHAHAR ROAD, HAPUR, DISTT. GHAZIABAD. (U.P.)

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

Date of Hearing/Decision:27.10.2010

Service Tax Appeal No.ST/751-752/10-SM

[Arising out of Order-in-Appeal No.27-28-ST/MRT-II/2010 dated 15.02.10 passed by the Commissioner (Appeals), Meerut-II].

Commissioner of Customs & Central Excise, Meerut-II ...Appellant

Vs.

M/s. Sandeep Bobbins Co. Pvt. Ltd. ... Respondent

Present for the Appellant :Shri.Anil Khanna, SDR
Present for the Respondent :Shri.Bipin Garg, Advocate

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final **ORDER NO.** 1220-1221/2010 SM(BR) **DATED:27.10.2010**

PER: D.N.PANDA

These two appeals Revenue came up with grievance that the first appellate order has waived the penalty imposed on the appellant under Rule 15 of the Cenvat Credit Rules, 2004 read with the provisions of Finance Act, 1994.

2. Ld. DR submits that the first appellate order does not disclose justification for waiver of penalty.

3. Such a contention of ld. DR is opposed by ld. Counsel saying that the first appellate order clearly discloses the reason that the Cenvat Credit issue, which was under consideration before First Appellate Authority, was contentious for which he waived penalty.

3. Heard both sides and perused the records. The show cause notice does not disclose any contumacious conduct of the appellant, when Section 76 of the Finance Act 1994 was invoked. The adjudication order also does not disclose the reason why penalty should be imposed and whether the elements of penal consequence of law are present. Ld. Commissioner (Appeals) appreciated that the Cenvat Credit issue under Finance Act, 1994 was contentious for the reason of the initial stage of development of law by the Composite ~~opposite~~ Rules of Cenvat Credit Rules 2004. Therefore, he held that to be contentious. It is also apparent from the adjudication order and first appellate order that the matter related to the period is April 2007 to September, 2007 and from October, 2006 to March, 2007. Having found that the controversy was a contentious issue, waiver of penalty was granted. When the adjudication order does not disclose any malafide of Assessee no penalty shall be exigible in view of the provision contained in Section 80 of the Finance Act, 1994. Ld. Commissioner appears to have taken into consideration all the aspects under provisions of Section 80 of the Finance Act 1994. Once, a beneficial construction of law is possible in the facts and circumstances of

the case, there is no scope to interfere to the order passed by the ld. First Appellate Authority. Consequently, both cases of the Revenue are dismissed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita