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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/964 /2009 – SM[BR] Date 15/11/2010

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

To :
C.C.E. DELHI I

C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

C.C.E. DELHI I Appellant

Vs

SHRI AMIT JAIN Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1223 / 2010-SM[BR] dated 27.10.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

SHRI AMIT JAIN

PARTNER OF M/S VINAMRA CABLE INDUSTRIES, H1274,DSIDC ,INDUSTRIAL AREA, NARELA, DELHI-110040

2. Adv. / Consult SHRI V.R. SETHI ADV.
401, SATYAM CINEMA BUILDING, RANJIT NAGAR
NEW DELHI-8.

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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No. 964/2009-SM

(Arising out of order in appeal No.10-11/CE/DLH/2009 dated 27.1.09 passed by the Commissioner of Central Excise (Appeals), Delhi-I)

Date of Hearing:27.10.2010

For approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982? No
2. Whether it should be released under Rule 27 of the CESTAT(Procedure) Rules, 1982 for publication in any authoritative report or not? No.
3. Whether Their Lordships wish to see the fair copy Of the order? No
4. Whether Order is to be circulated to the Departmental Authorities? Yes

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CCE, Delhi-I — Appellant

Vs

Shri Amit Jain — Respondent

Appeared for the Appellant: Shri Anil Khanna, SDR
Appeared for the Respondent: Shri V.R. Sethi, Advocate

Coram: **Hon'ble Mrs. Archana Wadhwa ,Member (Judicial)**

Final ORDER 1223/2010 SM (BR)

Per Archana Wadhwa :

Being aggrieved with the order passed by the Commissioner (Appeals) vide which he has set aside the penalty of Rs. 4 lakhs imposed on the respondents under Rule 26 of the Central Excise Rules, the Revenue has filed the present appeal.

2. I have heard Shri Anil Kumar, learned SDR appearing for the Revenue and Shri V.R. Sethi, learned Advocate for the respondents.

3. Vide the impugned order, the Commissioner (Appeals) has upheld duty confirmation against M/s Vinamra Cable Industries, a partnership firm alongwith upholding imposition of penalty upon them. However, in respect of the present respondent, he has observed that as penalty has been imposed on the partnership firm, there was no justification for imposing penalty on the partner for the same offence. For the above proposition, he has relied on Tribunal's decision in the case of CCE Ludhiana Vs Modern Steel and Agro Industries reported in 2007 (217) ELT 462 (Trib.Del). The Tribunal in the above judgement has held that when the partnership firm has been imposed penalty, a separate penalty on one of the partners is not justified as he will be jointly and severely liable with the other partners in respect of the penalty payable by the partnership firm.

4. The learned DR has relied upon Tribunal's decision in the case of Sushant Agarwal Vs CC Kolkata reported in 2006 (202) ELT 700 (Trib. Kol) as also Vishan Shamlal Milani Vs CCE Aurangabad reported in 2006 (202) ELT 90 (Tri. Mum) in support of his submission that a separate penalty imposed on the partner was justifiable.

5. On the other hand, learned Advocate appearing for the respondent, has relied upon Bombay High Court judgement in the case of CC Vs Jupiter Exports reported in 2007 (213) ELT 641 (Bom)

wherein it was held that when partnership firm is penalized, separate penalties cannot be imposed on partners.

6. I find that in the Tribunal's judgment relied upon by the DR, there is a specific finding that partner was actively involved in the clandestine removal of goods. I do not find specific role discussed by the lower authorities while imposing penalty on the respondents. In any case by following the Bombay High Court judgment in the case of Jupiter Exports (supra), a separate penalty on the partner, when the partnership firm is penalized, is not justified. Accordingly, I do not find any infirmity in the view adopted by the Commissioner (Appeals). Revenue's appeal is accordingly rejected.

(ARCHANA WADHWA)
Judicial Member

MPS*