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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/1787/2008 – SM[BR] Date 23/11/2010

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant

Vs

M/S BAJRANG ALUMINIUM INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1282 / 2010-SM[BR] dated 4.11.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S BAJRANG ALUMINIUM INDUSTRIES LTD.
   B-5, BIG INDUSTRIAL ESTATE, VARANASI, (U.P.)
2. Adv. / Consult SHRI V.LAKSHMIKUMARAN ADV.
   B-6/10, SAFDARJUNG ENCLAVE NEW DELHI-29.

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. 1787 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 61-CE/Alld/ 2008 dated 29.5.2008 passed by the Commissioner of Central Excise, Allahabad]

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? :

Commissioner of Central Excise Allahabad	Appellants
Vs.	
M/s. Bajrang Aluminium Indus. Ltd .	Respondent

Appearance:
Shri K.K. Jaiswal, DR for the Appellants
Shri Hemant Bajaj, Advocate for the Respondent

Date of Hearing/decision : 4.11.2010

Final **ORAL ORDER NO. 1282/2010 SM (BR)**

Per Ashok Jindal:

Revenue is in appeal for enhancement of penalty under Rule 27 of Central Excise Rules 2002. The facts of the case are that the respondents are manufacturing Aluminium circles and availed compounded levy scheme with an option to pay the duty of excise on the basis of number of cold rolling machines installed for the purpose of said goods. Accordingly, they were liable to observe the procedure laid down under notification No. 34/01-CE dated 28.6.01. The said notification did not grant exemption from following the procedure laid down under Rule 12 of the Central Excise Rules, 2002 and as per Rule 12 ibid, the respondents did not file ER I returns. Accordingly, a show cause notice was issued proposing penalty under Rule 27 ibid. Thereafter for contravention of 75 months, a penalty of Rs.5,000/- for each default was imposed on the respondents. The respondents preferred an appeal before the Commissioner (Appeals) who reduced the penalty from Rs.3,75,000/- to Rs.2000/- only. Aggrieved from said deduction of penalty, Revenue is in appeal.

2. Learned DR submitted that it is an admitted fact that the respondents had not followed the provisions of Rule 12 by not filing ER 1 return in time. Hence, the respondents are liable to pay penalty for each default committed by them. As the maximum penalty prescribed under Rule 27 ibid is Rs.5000/-, the respondents are liable to pay the penalty of Rs.3,75,000/- as imposed by the adjudicating authority.

3. On the other hand, the learned advocate for the respondent submits that it is not disputed that the respondent has paid the duty in time, intimated

the department in time and follow up the procedure which are applicable for compounded levy of duty scheme, only default committed by them was that they have not filed ER 1 return in time which is a procedural lapse under bonafide belief. He also submitted that the Commissioner has dealt with the issue in detail and he has rightly reduced the penalty to Rs.2,000/- Hence, the impugned order is to be upheld.

4. Heard and considered.

5. I have gone through the impugned order wherein the Commissioner (Appeals) has relied on the decision of Larger Bench of this Tribunal in the case of Mohinder Steel Ltd. vs. CCE reported in [2002) 145 ELT 290] wherein it was held that applicability of general provisions in Central Excise Act and Rules are excluded in case of compounded levy of duty. It was also observed that compounded levy scheme is an alternative scheme for payment of Excise duty. Relying on the above decision and as per the applicability of Central Excise manual Chapter XII Part I para 1.1, it has been mentioned that these provisions deal with all aspects of Central Excise such as payment of duty, maintenance of records, filing of return etc. He further observed as under:-

"Thus, in the light of the judgements quoted above and going through the spirit of the Notification No. 34/2001-CE dated 28.6.2001 issued under Rule 15 of the Central Excise Rules, 2002 as stated in para 1.1 Pt.I of Chapter 12 of the Central Excise Manual, I am of the view that the appellants were under the bona fide belief that they had discharged the Central Excise liability in terms of the said notification and that Notification 34/2001-CE dt. 28.6.2001 is complete code for filing of returns also and therefore they were not required to file monthly ER-1 return under Rule 12. They had mistakenly considered that filing of application in form Appendix II as an act of as if they had filed the return prescribed under Rule 12. They have further submitted that they had filed TR-6 / GAR-7 alongwith Appendix II, however monthly ER-1 was not possible to be prepared. I also find that they were filing of Appendix II regularly to the department, which is not disputed. The payment of excise duty has also not been disputed by the department. Further. I do not find any revenue implication in the instant case. There is only a procedural lapse which also was due to bona fide belief of the appellants that they had filed the requisite return in form of Appendix II. I thus hold that non-filing of monthly return is mere technical or procedural lapse which could have been avoided by timely intervention of or advice from the department. "

6. I have seen the impugned order wherein the Commissioner (Appeals) has rightly observed that this is only a procedural lapse which was committed by the respondents under bonafide belief and for such technical lapse, he has reduced the penalty to Rs.2,000/-. In the facts and circumstances of this case, the Commissioner (Appeals) has rightly reduced the penalty. Accordingly, I do not find any reason to interfere with the same. Hence the impugned order is confirmed. The appeal filed by the Revenue is rejected.

(Ashok Jindal)
Member(Judicial)

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