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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/1820/2008 – SM[BR] E/ CO / 335/2008-SM[BR] Date 23/11/2010

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

To :
C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S AMBIKA POLY TUBES, Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1287 / 2010-SM[BR] dated 10.11.2010 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 AMBIKA POLY TUBES,

13/22-A, NUNHAI, AGRA.

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)

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

E/Appeal No. 1820/08, CO/335/2008-SM

(Arising out of order in appeal No.280/CE/Appeal/KNP/08 dated 27.6.08 passed by the Commissioner of Central Excise (Appeals), Kanpur)

Date of Hearing:10.11.2010

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

CCE, Kanpur — Appellants

Vs

M/s Ambika Poly Tubes — Respondent

Appeared for the Appellant: Shri Krishna Pratap Singh, SDR
Appeared for the Respondent: Shri Bipin Garg, Advocate

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

Final ORDER - 1287/2010 SM (BR)

Per Archana Wadhwa:

Being aggrieved with the order passed by the Commissioner (Appeals) in so far as the same has set aside the penalty imposed on the respodents, the Revenue has filed the present appeal.

2. I have herd Shri Krishna Pratap Singh, learned SDR for the Appellant and Shri Bipin Garg, learned Advocate for the respondent.

3. Brief facts of the case are that during the course of physical verification of the stock of finished goods as well as of raw materials conducted by the preventive officers of Central Excise, Kanpur in the factory premises of the appellants on 15.6.2006 in the presence of Shri Bhuvesh Agarwal, Partner, shortages were detected in the stocks of raw materials, totally valued at Rs. 6,31,400/- involving Central Excise duty of Rs. 1,01,024/- and Education Cess of Rs. 2,020/-. Shri Bhuvesh Agarwal admitted the shortages in his statement recorded on the spot and debited the duty involved on the said shortages voluntarily before issue of show cause notice.

4. Accordingly, show cause notice dated 6.6.2007 was issued to the appellant which stands decided by the original adjudicating authority confirming the demand as also imposing equivalent amount of penalty under Section 11AC of the Central Excise Act. On appeal against the above order, the Commissioner (Appeals) confirmed the demand as not contested. However, he set aside the penalty imposed on the ground that as the duty was deposited before the issuance of show cause notice, the penalty is not required to be imposed. The said order is impugned before the Tribunal.

5. As ~~per~~ the law on the issue of imposition of penalty to the extent of 100% of duty stand declared by the Hon'ble Supreme Court in the case of Dharmendra Textile Processors as reported in 2008 (231) ELT 3 SC, penalty to the extent of 100% of duty is required to be imposed under Section 11AC and authorities have no jurisdiction to

reduce the same. As such, in view of no challenge to confirmation of duty demand, I uphold the duty as also penalty imposed to the extent of 100%.

6. However, Tribunal in the case of Swati Chemicals & Others reported in 2009 (94) RLT 684 (CESTAT) and the judgment of the Hon'ble High Court of Gujarat in the case of M/s Exotic Associates Vs CCE as reported in 2010 (252) ELT 49 (Guj), has held that where no such option has been extended by the lower authorities, the same can be extended by the Tribunal. In view of the law declared above, I extend the option to the appellant to deposit entire duty, interest and 25% of the penalty within a period of 30 days from the date of passing of the present order, in which case the penalty shall stand reduced to 25% of the duty.

7. The Revenue's appeal stands disposed of in the above manner. The Cross objection is disposed of accordingly.

(ARCHANA WADHWA)
Judicial Member

MPS*