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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

Date 23/11/2010

Appeal No. E/2190/2008 – SM[BR] AND E / 751 / 2009 –SM[BR]

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA

Appellant
Vs
Respondent

M/S SHAM UDYOG LTD.,

- I am directed to transmit herewith a certified copy of **Final order No.** 1292 – 1293 /2010-SM[BR] dated 9.11.2010 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 SHAM UDYOG LTD.,
   VILLAGE-GAUNSPURA, LUDHIANA ROAD, MALERKOTLA, (PUNJAB).
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 (Harvana)
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 SHAM UDYOG LTD.
VILLAGE GAUNSPURA, LUDHIANA ROAD,
MALERKOTLA DISTT;SANGRUA,[PB]

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 2190 of 2008-SM(BR)
Excise Appeal No. 751 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 193/CE/APPL/LDH/2008 dated 24.7.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh.]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, 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? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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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Excise Appeal No. 2190 of 2008-SM(BR)

Commissioner of Central Excise
Ludhiana — Appellants

Vs.

M/s. Sham Udyog Ltd. — Respondent

Excise Appeal No. 751 of 2009-SM(BR)

M/s. Sham Udyog Ltd. Appellants

Vs.

Commissioner of Central Excise Respondent
Ludhiana

Appearance:
Shri K.P. Singh, SDR for the Revenue Appellant
Shri Bipin Garg, Advocate for the Assessee - Respondent

Date of Hearing/decision : 9.11.2010

Final **ORAL ORDER NO. 1292-1293/2010-SM (BR)**

Per Archana Wadhwa:

Both the appeals, one filed by the assessee and other filed by the Revenue are being disposed of by common order as they arise out of same impugned order passed by Commissioner (Appeals). I have heard Shri K.P. Singh, SDR appearing for the appellant-Revenue and Shri Bipin Garg, Advocate appearing for the assessee- respondents.

2. As per facts on record, M/s. Sham Udyog Ltd. are engaged in the manufacture of MS ingots and were paying the duty under compounded levy scheme in terms of the provisions of Rule 96ZO (3) of the erstwhile Central Excise Rules, 1944. During the period October, 1998 to December, 1998 they short paid the duty to the extent of Rs.8,00,000/-. Proceedings were initiated against them for demand of the said amount of duty, which resulted in confirmation of the same by the original adjudicating authority vide his order dated 3.2.2004. On appeal against the said order, the Commissioner

(Appeals) confirmed the demand of Rs.5,06,988/- along with penalty of Rs.2,50,000/-. In the meanwhile the appellant had paid the amount of Rs.2,93,012/- from their RGA Part II account on 20.12.02 ~~and~~ as accepted liability. The same was confirmed by the authorities.

3. On appeal against the above order, the Tribunal remanded the matter to the original adjudicating authority by observing that the appellants claim for abatement of duty of Rs.5,06,988/- on account of closure of factory, stands pending before the Commission and as such confirmation of demand of duty on that count was premature. Accordingly, the matter was remanded with the directions to await the Commissioner's order on abatement.

4. In de novo proceedings, the Additional Commissioner took note of the fact that the appellants abatement stands allowed by the Commissioner to the extent of Rs.4,56,988/-. As such, the balance differential amount of Rs.50,000/- was recoverable from the appellant along with interest. He also observed that the interest on the amount of Rs.2,93,012/- late paid by the appellants is also required to be confirmed. Accordingly, the Additional Commissioner confirmed the recovery of Rs.50,000/- along with interest. Similarly, interest on amount of Rs. 2,93,012/- deposited late by the appellant was also confirmed. Penalty of Rs.50,000/- was imposed under Rule 96ZO(3) (ii) of the Rules, read with Rule 173Q.

5. On appeal against the above order, the appellate authority upheld the confirmation of demand of duty of Rs.50,000/- along with interest but set aside the penalty by following the Tribunal's decision in the case of CCE, Ludhiana vs. Sardar Associates Ltd. reported in [2007 (219) ELT 507]

wherein it was held that when the assessees' abatement claim is kept pending for long period, delay of deposit occurs on that ground, penalty under Rule 96ZO is not attracted.

6. The said order of the Commissioner (Appeals) is impugned by both sides.

7. As regards, the assessees' appeal, learned advocate for the appellant is not contesting the confirmation of interest on the amount of Rs.2,93,012/- which was paid late by the appellant. Similarly, he is not contesting the confirmation of duty of Rs.50,000/-. Their contest is only for confirmation of interest on the duty amount of Rs.50,000/-.

8. After hearing both sides, I find that admittedly, the abatement claim of the appellants was refused by the Commissioner and the amount of Rs.50,000/- was held as not abateable. As such, the appellants was required to pay the said amount. The deposit of said amount is admittedly delayed on account of claiming the higher amount as abatement. Such late deposit would admittedly attract the interest, which is nothing but a compensation to the exchequer for depriving them the use of such duty amount which the appellant was required to pay. Interest being an ~~appended~~ appendage to the principal amount is required to be paid once the principal amount is held to be payable. As such I find no merits in the learned Advocates plea for waiving the interest on the duty amount of Rs.50,000/-.

9. As regards the Revenue's appeal, which is against the setting aside of penalty by Commissioner (Appeals), I find that it is not a case where any malafide ~~position~~ intention stands attributed to assessee so as to invoke penal action

against them. This was a genuine claim of abatement which also stands accepted by the Commissioner to a large extent. The Commissioner (Appeals) reliance on the Tribunal's decision is appropriate and no fault can be found in respect of the same. Accordingly, I find no merits in the Revenue's appeal.

10. As a result of forgoing discussion, both the appeals are rejected.

(Archana Wadhwa)
Member(Judicial)

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