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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/185 /2005 – SM[BR] Date 19/07/2010

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

To :
C.C.E. ROHTAK
17-P, SECTOR 1, ROHTAK.

C.C.E. ROHTAK Appellant

Vs

M/S ANNPURNA OVERSEAS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 766 / 2010 –SM[BR] dated 15.7.2010 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 ANNPURNA OVERSEAS LTD.
   6KM STONE, VILLAGE BABARPU9R, G.T ROAD PANIPATH
2. Adv. / Consult
   SHRI K.K. ANAND ADV.
   A-5, BASMENT LAJPAT NAGAR-III 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,

West Block No.2, R.K.Puram, New Delhi

COURT-III

SINGLE MEMBER BENCH

Date of hearing/decision: 15.7.2010

Central Excise Appeal No.185 of 2005-SM

Arising out of the order in appeal No.377-78/AKG/RTK/2004 dated 15.10.04 passed by the Commissioner (Appeals), Central Excise, Delhi III, Gurgaon.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

C.C.E., Rohtak .... Appellant

Vs.

M/s Annpurna Overseas Ltd. .... Respondent

Appearance:

Shri S.K. Bhaskar, Authorised Departmental Representative (JDR) for the Revenue and Shri Hemant Bajaj, Advocate for the appellant

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. 766/2010 SM (Br)

Per M. Veeraiyan:

This is an appeal by the Department against the order of Commissioner (Appeals) No. 377-78/AKG/RTK/2004 dated 15.10.04.

2. Heard both sides.

3.1 On 17.8.2001, when the officers visited the premises of the respondent, they found shortage of finished goods and the duty involved amounting to Rs.9,879/- was debited by the respondents. When the officers visited the factory again on 23.11.2001, they found that 12 numbers of Cut Chemile Machines on which credit was taken were cleared on paying lower duty by taking higher depreciation and on this being pointed out , a sum of Rs.15,826/- was debited;

3.2 The respondents were found to have cleared dutiable Cotton yarn falling under Chapter 52 valued at Rs.2,12,54,641/- during the financial year 2000-01 and Chenile yarn falling under Chapter 56 valued at Rs.1,52,58,832/- during 2000-01. The value of clearances of these taken together exceeded Rs.3 crores and therefore, they were found to be not entitled to concessional rate of duty during the period 2001-02. For the first few months in 2001-2002, the respondents have cleared availing lower rate of duty. During investigation, the respondents submitted that they were not aware that the clearances of goods falling under different tariffs should be taken together for determining the eligibility limit. However, they paid duty involved before issue of show cause notice. The original authority confirmed the demand of Rs.5,05,705/- along with interest and imposed equal amount as penalty on the respondent company. The original authority also imposed penalty of Rs.10,000/- on Shri Arun Kumar Singh, General Manager of the respondents' company. Commissioner (Appeals) set aside the penalties on the respondent's company and Shri Arun Kumar Singh. The respondent is not in appeal challenging the duty demand. The Department is challenging the setting aside the order of penalties on the respondent's company and Shri Arun Kumar Singh.

4. Learned DR submits that in the show cause notice, there is a clear allegation of clandestine removal and wrong availment of benefit of Notification No.9/2001 dated 1.3.2001 in contravention of the provisions of various Rules and evading excise duty and therefore, the finding of the Commissioner (Appeals) that there was no allegation of fraud, collusion or suppression of facts to attract the provisions of Section 11AC is not correct.

Further, merely because the respondents paid duty before issue of show cause notice, that is no justification for not sustaining the penalty.

5. Learned Advocate for the respondents submits that Shri Arun Kumar Singh is not cited as respondent. Regarding the respondent company, he submits that they were filing returns to the Department which indicated clearances of both category of goods. They were under a bona fide belief that the clearances of goods falling under Chapter 52 alone should be considered for eligibility limit for availing the benefit of clearance of goods falling under Chapter 52 for the next financial year and that clearances of Chapter 56 during the previous financial year is relevant for determining the eligibility for availing exemption on clearances under Chapter 56 during the succeeding year. However, since the clearances of both varieties of yarns were duly reported to the Department, the question of mis-declaration , if any, does not arise.

6. I have carefully considered the submissions from both sides. The duty demand of Rs.9,879/- was on shortage of goods and no evidence of any clandestine removal produced even though allegations of clandestine removal is made in the show cause notice. Regarding demand of duty of Rs.15,826/- relating to the short payment of duty of clearances of capital goods by adopting higher depreciation, it was also a case of interpretional differences. Further, I am in agreement with the submissions of the learned Advocate for the respondents that as the respondent company have been filing returns indicating clearances of Cotton Yarn and Chenile Yarn relating to the provisions of financial year [2000-01] and every month during the current financial year [2001-02], the question of suppression of relevant facts by the respondent company does not arise. Therefore, the finding of the Commissioner (Appeals) that there was no fraud, collusion or suppression of facts, cannot be faulted. Of course, the other reasoning adopted by the Commissioner (Appeals) that no penalty is imposable on the ground that they have paid duty involved before issue of show cause notice does not hold good. However, in the absence of ingredients for invoking

proviso of Section 11AC, the order of the Commissioner (Appeals) in setting aside the penalty does not call for interference.

7. As the Department's appeal cites only M/s Annpurna Overseas Ltd. as the respondents, the prayer for setting aside the penalty on Shri Arun Kumar Singh is beyond the scope of this appeal.

8. The appeal is, therefore, rejected.

(M. Veeraiyan)
Technical Member

scd/