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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/2259/2008 – SM[BR] Date 17/08/2010

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

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

C.C.E. RAIPUR Appellant
Vs
SHRI IQBAL RAZAK HINGORA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 882 / 2010 –SM[BR] dated 5.8.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

SHRI IQBAL RAZAK HINGORA
DIRECTOR OF M/S SHREE SITA ISPAT & POWER P.
LTD.GUMA,URLAROAD, VILLAGE BOREJHARA, RAIPUR (C.G.)

2. Adv. / Consult SHRI RAMESH NAIR ADV.
N/V;------------------------

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
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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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 2259 of 2008 (SM)

[Arising out of the Order-in-Appeal No. 75/RPR-I/2008 dated 14/07/2008 passed by The Commissioner (Appeal-I), Central Excise, Raipur.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 would 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 Department Authorities?	:

CCE, Raipur — Appellant

Versus

Shri Iqbal Razak Hingora]
Director of M/s Shree Sita Ispat] — Respondent
& Power P. Ltd.]

Appearance

Shri K.P. Singh, Authorized Representative (SDR) – for the appellant.

Shri Ramesh Nair, Advocate – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 05/08/2010.

Final Order No. 882/2010 SM (BR) Dated : ______________

Per. Rakesh Kumar :-

The Respondent is Director of a private limited company – M/s Shree Sita Ispat & Power P. Ltd., Raipur, (hereinafter referred to as SSIPPL), which is engaged in the manufacture of Sponge Iron and MS Ingots, chargeable to Central Excise Duty under Chapter 72 of the 1st Schedule to the Central Excise Tariff Act, 1985. In connection with a case of duty evasion booked against another manufacturer – M/s Shivalaya Ispat & Power Pvt. Ltd. by the Directorate General of Central Excise Intelligence, the DGCEI officers in follow up action also searched the premises of SSIPPL on 27/9/06 in presence of panch witnesses. In the course of search some loose papers containing details of the goods dispatched from the factory were recovered. On detailed examination of those loose papers, the same were found to be containing the details of the clearances of sponge iron and on cross checking with the Central Excise records, it was found that those removals was not reflected in the Central Excise records and no invoices had been issued. The total quantity of sponge iron so removed was determined as 99.9 MT valued at Rs. 9,90,000/- (Rupees Nine Lakh Ninety Thousand) and involving Central Excise Duty of Rs. 1,63,037/- (Rupees One Lakh Sixty Three Thousand and Thirty Seven). Statement of Shri Sukumar Ghosh, General Manager of SSIPPL was recorded on same day under Section 14 of the Central Excise Act, wherein on being asked about the loose papers containing details of the removals of sponge iron, he accepted that consignments mentioned in those papers had been removed without issue of invoice and payment of duty and the payments for the same had been collected in cash. Statement of Shri Iqbal Razak Hingora, respondent in this case, who is the Director of SSIPPL was recorded on 30th April 2007, wherein on being shown the loose papers recovered from the factory premises and also being shown the statement of Shri Sukumar Ghosh he stated that he admits the deposition made by the Ghosh and accept his statement as correct. He further confirmed that the goods mentioned in those loose papers had been removed without payment of duty and had been sold in cash without accounting for the same in their books of accounts. In view of the above, a show cause notice dated 3/12/07 was issued to SSIPPL as well as to Shri Iqbal Razak Hingora, Director of SSIPPL, for demand of Central Excise duty amounting to Rs. 1,63,037/- (Rupees One Lakh Sixty Three Thousand and Thirty Seven) on clandestine clearances of 99.9 M.T. of sponge iron, alongwith interest and also for imposition of penalty on the SSIPPL as well as on its Director, Shri Iqbal Razak Hingora. However, even prior to the issue of the show cause notice SSIPPL has deposited the entire amount of duty on 1/5/07. The show cause notice had been served on the noticees on 20th December 2007. After being served the show cause notice, SSIPPL also paid the interest and an amount to equal to 25% of duty towards penalty on 21/1/08.

1.2 The show cause notice was adjudicated by the Assistant Commissioner vide order-in-original dated 7/4/08 by which the duty demand of Rs. 1,63,037/- (Rupees One Lakh Sixty Three Thousand and Thirty Seven) was confirmed alongwith interest against SSIPPL and the amount of Rs. 1,63,037/-

already paid was appropriated towards this demand and beside this while penalty of Rs. 1,63,037/- (Rupees One Lakh Sixty Three Thousand and Thirty Seven) was imposed on SSIPPL, penalty of Rs. 82,000/- (Rupees Eighty Two Thousand) was imposed on the respondent Shri Iqbal Razak Hingora.

1.3 SSIPPL as well as Shri Iqbal Razak Hingora, filed appeals against the Assistant Commissioner's order before the Commissioner (Appeals) and before the Commissioner (Appeals) in addition to other grounds one of the ground taken by SSIPPL and Shri Hingora was that since SSIPPL had paid the entire amount of duty, interest and an amount of equal to 25% of duty towards the penalty, in accordance with the provisions of 1st proviso to sub-Section (2) of Section 11A, the penalty on SSIPPL in excess of the amount of 25% of the duty should be set aside and penal proceedings against the Director of SSIPPL should be dropped. The Commissioner (Appeals) vide order-in-appeal dated 14th July 2008 while upholding the duty demand and penalty of equal amount on SSIPPL, set aside penalty on Shri Iqbal Razak

Hingora by invoking the provisions of 1st proviso to sub-section (2) of Section 11A. It is against this order of the Commissioner (Appeals) setting aside the order of the Assistant Commissioner imposing penalty of Rs. 82,000/- on the Respondent under Rule 26 of the Central Excise Rules, 1944, that the department has come in appeal.

2. Heard both the sides.

2.1 Shri K.P. Singh, the learned Departmental Representative pleaded that this is a case of deliberate evasion of duty by clandestine removal, that the Act of clandestine removal has been accepted by Shri Sukumar Ghosh, GM, SSIPPL as well as by the respondent Shri Iqbal Razak Hingora, Director of SSIPPL, that since the duty evasion had taken place with full knowledge of the respondent and respondent was directly involved with clandestine removal, he is liable for penalty under Rule 26 of the Central Excise Rules, that the Commissioner (Appeals) has wrongly extended the benefit of 1st proviso to Section 11A (2) of Central Excise Act, as in this case while the duty had been paid prior to the issue of show cause notice, the interest and penalty has been paid after the expiry of 30 days of the date of communication of the show cause notice, and that in view of this, the impugned order setting aside the penalty on Shri Iqbal Razak Hingora is not correct.

2.2 Shri Ramesh Nair, Advocate, the learned Counsel for the respondent reiterating the Commissioner (Appeals) finding, pleaded that since penalty equal to the duty amount demand confirmed has been imposed on the company SSIPPL, there is no case for imposition of penalty on the Director, that Commissioner (Appeals) has rightly extended the benefit of 1st proviso to Section 11A (2) as in this case, the entire duty demand, interest, and an amount equal to 25% of the duty had been paid and that in any case penalty of Rs. 82,000/- (Rupees Eighty Two Thousand) on the respondent is not justified.

3. I have carefully considered the submissions from both the sides. The clandestine removal without payment of duty of 99.9 M.T. of sponge iron had been admitted not only by the

GM (Commercial) of SSIPPL, but also by the respondent who is the Director of the assessee company SSIPPL and, therefore, I hold that the respondent is the person who was concerned the sale and disposal of the clandestine removal of goods and accordingly the penal provisions of Rule 26 of Central Excise Rules would be attracted in this case. The Commissioner (Appeals) has waived the penalty on the respondent by invoking the provisions of 1st proviso to sub-Section (2) of Section 11A. Sub-Section (1A) of Section 11A states that in a case of non-payment, short payment or erroneous refund of duty taking place by the reason of fraud, collusion, or any willful misstatement or suppression of facts or contravention of the provisions of the Act or the Rule made thereunder with intent to evade payment of duty, the person to whom the show cause notice is served under proviso to Section 11A (1), may pay the duty in full or in part as may be accepted by him, together with the interest chargeable under Section 11AB and penalty equal to 25% of the duty specified in the notice or duty so accepted by such person, within a period of 30 days from the receipt of the show cause notice. 1st proviso to sub-Section (2) of Section 11A states that if a person who has paid the duty in full together with interest and penalty under sub-Section (1A) the proceedings in respect of such person and other persons to whom the notice are served shall, without prejudice to the provisions of Section 9, 9A and 9AA, be deemed to be conclusive as to the matters stated therein. The Commissioner (Appeals) has waived the penalty on the respondent by invoking the provisions of the 1st proviso to Section 11A (2). However, the 1st proviso to Section 11A (2) would come in picture only when the full duty or duty as admitted alongwith interest and an amount equal to 25% of the duty/admitted duly has been paid within a period of 30 days from the date of receipt of the notice. In this case, as mentioned in the appeal memo and not disputed by the respondent, while the duty had been paid prior to the issue of the show cause notice, the interest and penalty equal to 25% of the duty was paid only after the expiry of period of 30 days from the date of communication of the show cause notice. In view of this, the Commissioner (Appeals)'s order invoking the provisions of 2nd proviso to Section 11A (2) is not correct and is liable to be set aside.

4. In view of the above discussion, the Commissioner (Appeals)'s order setting aside the penalty on the respondent is set aside and in this regard the Assistant Commissioner's order is restored. However, since the entire amount of duty had been paid prior to the issue of show cause notice and subsequently interest and 25% of the duty towards the penalty has already been paid, though not within the period stipulated in sub-Section (1A) of Section 11A, the penalty on the respondent is reduced to Rs. 25,000/- (Rupees Twenty Five Thousand).

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK