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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1152/2006 - EX[DB]   Date **06/07/2011**

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

To :
VINOD KUMAR BANSAL, C/O PRABHU DAYAL HARI
MOHAN
HOUSE NO. 4353, OPP. DAUJI MANDIR, BALDEV
GANJ, KOSI KALAN, U.P.
281403

VINOD KUMAR BANSAL, C/O PRABHU DAYAL HARI MOHAN Appellant

Vs

C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No.495/ 2011 EX|DB|** dated 29-6-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult
MS.TANUSHREE SINHA
CHAMBER NO. 20A, SUPREME COURT LAWYERS CHAMBERS, SUPREME
COURT OF INDIA, NEW DELHI

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No. 1152/2006- Ex(BR)

[Arising out of Order-in-Original No. 147/2005 dated 28.10.2005 passed by the Commissioner of Central Excise, New Delhi]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, 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?	:	Yes
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?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

M/s. Vinod Kumar Bansal Appellant

Vs.

Commissioner of Central Excise
Delhi I Respondent

Appearance:
Ms. Tanushree Sinha, Advocate for the Appellants
Shri B.K. Singh, Jt.CDR for the Respondent

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 29.6.2011

FINAL **ORAL ORDER NO. 495/2011- EX**

Per M. Veeraiyan (for the Bench):

This is an appeal challenging the penalty of Rs. 10 lakhs imposed on the appellant under Rule 209 A of erstwhile Central Excise Rules, 1944 and Rule 26 of Central Excise Rules, 2001 and CE Rules, 2002 by the order of the Commissioner No. 147/2005 dated 28.10.05.

2. Heard both sides.

3. Commissioner by the impugned order, in pursuance to SCN dated 14.5.04 confirmed demand of duty on M/s. Amar Jyoti Packers ~~and imposed~~ along with interest and imposed penalties on the said firm and 4 others including the present appellant. The Commissioner held that M/s. Amar Jyoti Packers have indulged in suppression of production and clandestine removal of such suppressed production and that four persons including the present appellant have played major roles in the said clandestine activities. The present appellant was authorised signatory and accountant of M/s. Amar Jyoti Packers against whom demand has been confirmed. In the present proceedings we are concerned only with the appeal of the present appellant.

4.1 Learned Advocate for the appellants submits that the main party M/s. Amar Jyoti Packers filed appeal before the Tribunal and inasmuch as they have not complied with the pre-deposit ordered in terms of section 35F of the Central Excise Act their appeal stands dismissed. She also submits that three other persons namely Shri Devi Dass Garg, Shri Rakesh Kumar Garg and Shri Santosh Kumar Garg also filed appeals and their appeals have been disposed of by final order No. 533- 535/2010 Ex dated 6.8.2010 substantially reducing the penalties imposed on them.

4.2 Coming to the role of the present appellant, she submits that the appellant was only a paid employee drawing a monthly salary of Rs.3000/-. Inasmuch as the appeal of the main party M/s. Amar Jyoti Packers was dismissed only for want of compliance of pre-deposit order, the charges of suppression of production and clandestine removal cannot be held to have been established. Without prejudice to that, she submits that the appellant has not dealt with the goods knowing that they were liable for confiscation and therefore, no penalty should be imposed on the appellants. She submits that as a paid employee, the appellant has only performed his professional functions, and therefore, no penalty should be sustained. In this regard she relies on the decision of the Hon'ble High Court of Bombay in the case of Jyantilal Thakker and Co. vs. UOI reported in [2006 (195) ELT 9].

4.3 Alternatively, considering the facts that the appellant was only a poorly paid employee she seeks leniency and reduction of the penalty.

5. Learned Jt. CDR on the other hand, submits that the appellants as authorised signatory was fully involved in the manipulation right from the stage of procurement of unaccounted raw materials and clandestine removal of the final products. He adds that, for imposition of penalty on a person under Rule 209 (A) of the Central Excise Rules, 1944 and Rule 26 of the Central Excise Rules 2002, there is no need that the goods should be physically dealt with by the said person. In this regard, he relies on the decision of the Tribunal in the case of Dr. Writer's Food Product [2009 (242) ELT 381 (Tri-Mum)].

6. We have carefully considered the submissions from both sides and perused the records. The Commissioner vide impugned order demanded duty from M/s. Amar Jyoti Packers and imposed penalties on M/s. Amar Jyoti Packers and 4 persons including the appellants. It has been submitted that the appeal of M/s. Amar Jyoti Packers has been dismissed for non-compliance of conditions of stay order passed in terms of 35F of Central Excise Act and therefore, it should not be held that the charges of suppression of production and clandestine removal as established. The fact remains that the Commissioner has confirmed the demand of duty against the said firm and the appeal against the said order stands dismissed by the Tribunal. As earlier pointed out, the three other persons on whom penalties were imposed by the impugned order filed appeals before the Tribunal and their roles have been appreciated in

the clandestine activities leading to evasion of duty and they were held liable to pay penalties, though the quantum of penalties were reduced vide Tribunal's order dated 6.8.2010. Therefore, the contention of the learned Advocate, that the charge of suppression of production and clandestine removal of the same cannot be held to have been established cannot be accepted. The Commissioner has given detailed findings on the role of the present appellant in paragraph 178 and 179 of the order in original. It has come on record that the appellant, as accountant has admitted that there were production and clearance of finished goods (as reflected in RG 1 register) on 18.10.2000, 19.10.2000 and 20.10.2000, but no raw material was shown as received or issued for production in form IV register. Commissioner has thus, held that the appellant was involved in clandestine handling and procurement of raw materials. He has also taken note of the fact that the job of mixing the raw materials, a trade secret of pan masala and gutka, was done by the appellant. Taking note of the statements of appellant and the statements of Shri Mukesh K Gautam, Dinesh Kumar and Shri Rajender Singh, he has held that the appellant was aware of removal of finished goods with bills and without bills. He has also taken note of the fact that entire activities relating to production, maintenance of quality, payment of salary etc. was mainly looked after by the appellant. These were not merely the work of an accountant. Besides, he was the authorised signatory of the M/s. Amar

Jyoti Packers . To our specific query as to whether the statement of appellant was retracted, learned advocate submitted that no retraction has been made. In view of the above circumstances, the finding of the Commissioner that the appellant was knowingly involved in activities of suppression of production and clandestine removal cannot be held unreasonable. Therefore, we find justification for imposing penalties on the appellants as held by the Commissioner.

7. However, considering the entire facts and circumstances of the case and considering that in the appeals by the three other persons, there has been substantial reduction in penalties, we deem it appropriate to show some leniency.

8. The appeal of the present appellant is partly allowed by reducing the penalty from Rs.10 lakhs to Rs.5,00,000/- (Rupees Five lakhs only).

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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