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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

Date 04/05/2011

Appeal No. E/709 /2010-710 /2010 - EX[DB] WITH
E/S/734-735/2010-EX

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

To :
M/S. OM AUTO TRADING PVT. LTD.
B-5/10, MODEL TOWN, DELHI.

M/S. OM AUTO TRADING PVT. LTD. Appellant
Vs
C.C.E. DELHI I Respondent

STAY ORDER NO. 505-506/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.380-381/ 2011 EX[DB]** dated 25-2-11 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
MR.S.JAINA & ASSOCIATES
84,DARYAGANJ.N.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 (Haryana)
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,
15. SH. HARI OM GOYAL
B-5/10, MODEL TOWN, DELHI.

Assistant Registr
(Excise Appeal Brancl

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:25.02.2011
Date of decision:25.02.2011

Appeals Nos. E/709/2010
& Stay Application No.E/Stay/734/10-Excise

M/s. Om Auto Trading Pvt. Ltd. Appellant

Vs.

CCE, Delhi-I Respondent

Appeal No. E/710/2010
& Stay Application No.E/Stay/735/10-Excise

Shri Hari Om Goyal Appellant

Vs.

CCE, Delhi-I Respondent

[Arising out of common Order-in-Original No.64/PKJ/CCE/ADJN./2009 dated 30.12.2009 passed by the Commissioner of Central Excise (Appeals), New Delhi].

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should 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 Departmental authorities?

Appearance: Rep. by Ms. S. Jaina, Advocate for the appellant.
Rep. by Shri R.K. Verma, DR for the respondent

CORAM: **Hon'ble Justice Shri R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Stay Order No. 505-506/2011-EX
Final Order No. 380-381/2011-EX /Dated

Per Rakesh Kumar

Though these appeals were listed for hearing in respect of stay applications only, after hearing the matter for some time, we are of the view that the appeals themselves can be finally disposed off as there is no point in keeping the same pending. Accordingly, the appeals were heard for final disposal.

2. The facts leading to filing of these appeals and stay applications are, in brief, as under:-

2.1 The Appellant Company whose Managing Director is Shri Hari Om Goyal manufactures Auto parts of "KAMEI" brand, which are chargeable to central excise duty. Their manufacturing activity is confined to procuring unbranded parts from various sources, testing of the same, affixing of their brand name and packing. During the period of dispute i.e. 2006-2007 and 2007-2008, as per the provisions of Section 2(f)(iii) of the Central Excise Act, 1944, these activities of packing, labelling and affixing of brand name on auto parts amounted to manufacture. The Appellant, claiming that they are eligible for SSI exemption under notification No.8/2003-CE as amended from time to time, were not paying any duty. On 24.8.2004, the officers of central excise Commissionerate, Delhi-I, on receipt of intelligence that the Appellant Company are indulging in large scale of duty evasion, searched (a) factory, (b) godown-cum-sales office, (c) shop/dealer's premises and (d) residence of Shri Hari Om Goyal. From the premises at B-5/10, Model Town, Delhi-9, where testing, affixing of brand name and packing takes place, a computer CPU installed in the premises was recovered and from Shri Manish Gupta, Accountant of the Company, a USB storage device was recovered. The printout of the data stored in USB storage device was obtained in presence of Shri Manish Gupta and panch witnesses and the same was resumed. The excisable goods found in the premises were detained and unaccounted cash of Rs.5,00,000/- found was placed under seizure . In the premises of the Appellant at 1/778, Nicholson Road, Kashmere Gate, Delhi-6, which was being used as storage place, the goods collectively valued at Rs.84,61,838/- were recovered and placed under seizure. From the residential premises of shri Hari Om Goyal at 3/5, Under Hill Road, Civil Lines, Delhi, loose documents (kachcha slips), a Compaq laptop, 3 CDs and a floppy were recovered and resumed. From the business premises of M/s. Fargo Auto

Electronicals, Kashmere Gate, Delhi-6, owned by Shri Deepak Goyal, Son of Shri Hari Om Goyal, auto parts valued at Rs.12,73,895/- and two computer CPUs were seized.

2.2 Statement of Shri Manish Gupta, Accountant of the Appellant Company, was recorded on 24.08.2007 wherein he stated that he is working as accountant for this company for the last two years, that the Appellant Company procures unbranded auto parts from various suppliers, tests the same, and markets them after affixing the brand name "KAMEI" and packing, that unbranded parts in loose condition are received with bills as well as without bills, that the records of receipt of auto parts received with bills are maintained in the company's books of accounts maintained on computer installed in the office, that the records of auto parts received without bills is not reflected in the Company's books of accounts, but the same is kept in the USB storage device, that after receiving unbranded auto parts without bills, the challans under which the same were received are destroyed, that sales of the Appellant Company were being looked after by Shri Deepak Goyal, Son of Shri Harim Om Goyal, that the USB storage device recovered from him contained the details of purchase of loose unbranded auto parts received without any bills and sales of the branded auto parts without bills, that total purchase during 1/8/07 to 16.08.2007 period, as shown in the purchase register maintained in the USB storage device recovered from him was Rs.57,85,187/- and total sale of auto parts, as per the details retrieved from USB storage device during 1.8.07 to 16.08.07 were

Rs.74,04,398/-, that Appellant Company's sale during 2006-07 were Rs.4 Crores to Rs.5 Crores and that the sales during the current financial year were Rs.2 Crores to Rs.2.5 Crores. Shri Deepak Goyal in his statement dated 24.08.2007 admitted that he was looking after the office administration and sales of the Appellant Company even though he did not have any specific position in the Appellant company. Shri Manish Gupta in his further statement dated 25.08.2007, confirmed his statement dated 24.08.07 and stated that as per directions of Shri Hari Om Goyal, he was deleting the details of unaccounted purchase of unbranded loose auto parts and sales of branded and packed auto parts in the USB storage device every month. Statements of Shri Hari Om Goyal were recorded on 10.09.07 and 17.09.07 wherein he admitted that the printouts from USB storage device shown to him pertains to sales during 1.8.07 to 16.08.07 which is Rs.74,04,398/-.

2.3 The USB storage device resumed on 24.08.2007 was further examined by investigating officers in presence of two panch witnesses with the help of computer experts and also in presence of Shri Hari Om Goyal. As a result of examination, some more hidden/deleted files were located and their printouts were taken.

2.4 Premises of M/s. Friends Sales Corporation, 188/A-1, Basra Bazar, Kashmeri Gate, Delhi-6, a buyer of auto parts from the Appellant Company, were searched on 4.3.2008 and some unaccounted "KAMEI" brand auto parts and kachcha records relating to purchase of "KAMEI" brand auto parts from the Appellant company were recovered. The duty involved on the clearances recorded on kachcha purchases was Rs.25,566/-

2.5 On the basis of Shri Manish Gupta's statement that the Appellant Company's unaccounted sales during 2006-2007 were worth about Rs.4.5 Crores and during 2007-2008 were worth Rs.2.25 Crores and on this basis, duty evaded during 2006-2007 and 2007-2008 was Rs.57,12,000/- and Rs.44,91,888/- respectively, a show cause notice dated 22.5.2008 was issued to the Appellant Company, and others for -

(a) recovery from the Appellant company, allegedly short paid duty amounting to Rs.1,01,03,888/- (Rs.57,12,000 + Rs.44,91.888/-) in respect of clearnces during period from 1.4.006 to 15.3.2008, along with interest on this duty under Section 11 AB of Central Excise Act, 1944;

(b) recovery of short paid duty amounting toRs.5,162/- on the goods seized from the shop at M/s. Friends Sales Corporation and duty amounting to Rs.25,566/- on the basis of kachcha slips recovered from M/s. Friends Sales Corporation, along with interest on this duty under Section 11 AB;

(c) imposition of penalty on the Appellant company under Section 11 AC;

(d) confiscation of finished goods bearing "KAMET" brand seized from the premises of Appellant company at 1/778, Nicholson Road, Delhi, M/s. Fargo Auto Electricals, factory premises of Appellant company and premises of M/s. Friends Sales Corporation;

(e) confiscating of cash of Rs.5,00,000/- seized from the factory premises of Appellant company; and

(f) imposition of penalty under Rule 26 of Central Excise Rules, 2002 on Shri Hari Om Goyal.

2.6 The above show cause notice was adjudicated by Commissioner of Central Excise, Delhi-I vide Order-in-Original No.64/PVJ/CCE/09 dated 30.12.2009 by which -

(a) duty demand of Rs.30,91,564/- for 2006-2007 period and Rs.25,07,106/- for 1.4.07 to 15.3.08 period was confirmed under proviso to Section 11 A(1) along with interest on it under Section 11 AB and an amount of Rs.s5 Lakhs already paid was appropriated towards this demand;

(b) penalty of Rs.55,98,670/- was imposed on the Appellant company under Section 11 AC;

(c) goods seized from various premises were ordered to be confiscated with option to be redeemed on payment of redemption fine; and

(d) penalty of Rs.2 Lakhs was imposed on Shri Hari Om Goyal under Rule 26 of the Central Excise Rules, 2002.

2.7 Against the above order the present appeals and stay applications have been filed.

3. Heard both sides on 29.11.2010 and 25.2.2011.

4. In course of hearing on 29.11.2010, the following submissions were made:-

4.1. Mrs. S. Jaina, Advocate, the learned Counsel for the Appellant pleaded that all the relied upon documents were not supplied to the appellant despite several requests, that though such a plea was made before the Commissioner at the time of hearing on 29.12.2009, the Commissioner in the impugned order has not recorded the same, that the Appellant at the time of personal hearing had asked for a few days' time to submit documentary evidence in respect of the entries recorded in USB storage device to show that the same are reflected in the books of accounts and had submitted a reconciliation statements on 1.10.2010 by speed post but the Commissioner passed the order on 30.12.2009 without waiting for the same, that the entries in the USB storage device had been fully explained and the Appellant had not crossed the exemption limit, that on examination of the data, it has been found that every entry in the retrieved documents is in the statutory records of the Appellant and the total clearances of the Appellant were within the SSI exemption limit, that request for 2 to 3 day's time for submission of documentary evidence is not dilatory tactics, that the Commissioner's order is, therefore, in gross violation of the principles of natural justice, that the goods seized from the Appellant's factory and other premises were not liable for confiscation, that no penalty is imposable either on the Appellant company or on Shri Hari Om Goyal, and that in view of this, the impugned order is not correct.

4.2 Shri R.K. Verma, the learned Departmental Representative defended the impugned order by reiterating the Commissioner's findings.

4.3 After hearing both the sides on 29.11.2010, the Tribunal passed an order directing the Department to verify as to whether the reconciliation statement had been submitted by the Appellant to the Commissioner.

5. On 25.2.2011, the Department submitted the Commissioner's report dated 15.2.2011. From the report, it is clear that the Appellant's reconciliation statement dated 1.1.2010 explaining that the entries in the data retrieved from USB storage device are reflected in the books of accounts of the Appellant had been received by the Commissioner but the same was not considered by him. The impugned order, therefore, is vitiated due to denial of natural justice. The same is set aside. The matter is remanded to the Commissioner for de novo adjudication after considering their plea that the data retrieved from USB storage device is reflected in their statutory records. The relied upon documents, if any still not supplied, may also be supplied before hearing. The appeal and the stay application stand disposed of as above.

(Operative portion of the order was pronounced in the court after conclusion of hearing of this matter on 25.2.2011)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Ckp.