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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/2779/2005-2781/2005 - EX[DB]   Date **13/07/2011**

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

To :
C.C.E.JAIPUR-I
N.CR.B.STATUE CIRCLE C-SCHEME JAIPUR

C.C.E.JAIPUR-I   Appellant
Vs
M/S SAVITRI CONCAST LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No.574,574A&574B/2011 EX[DB]** dated 05-7-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S SAVITRI CONCAST LTD.
F-876-877,ROAD NO.14-P,
V.K.I.AREA JAIPUR RAJASTHAN

2. Adv. / Consult SH. P. MALIK, ADV.,
123, VIDHYUT NAGAR-B,
QUEENS ROAD, JAIPUR-21

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.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision5.7.2011

Central Excise Appeal No.2779, 2780, 2781 of 2005 with Cross-Objection No.67 , 68, 69 of 2006

Arising out of the order in appeal No.141-143(MPM)/CE/JPR-I/2005 dated 6.5.2005 passed by the Commissioner (Appeals I), Central Excise, Jaipur.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M.Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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., Jaipur- I ... Appellant

Vs.

M/s Savitri Concast Ltd. .. Respondents

Appearance:

Shri Sunil Kumar, Authorised Departmental Representative (DR) for the respondent
None for the respondents

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Technical Member

FINAL Oral Order No. 574, 574A & 574B/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the DR for the appellant and none present for the respondents though served.

2. Since a common question of law and fact arise in all these appeals, they were heard together and are being disposed of by this common order.

3. These appeal arise from a common order passed by the Commissioner (Appeals), Jaipur on 6.5.2005. Three appeals came to be filed before Commissioner (Appeals), Jaipur being Appeal No.141, 142, 143/2005 against three different orders passed by the adjudicating authority. The adjudicating authority by its orders had confirmed the demand in terms of Rule 96ZO(3) of the erstwhile Central Excise Rules, 1944 and had also imposed penalty. The adjudicating authority had in fact imposed duty and penalty with reference to the period as specified under the Table :

Sl.No.	O.I.O No. & date	Duty demanded (in Rs.)	Penalty imposed (in Rs.)	Period of dispute
1	2	3	4	5
1.	50/2002 dated 24.6.02 and Addendum dated 1.7.02	Interest demanded Rs.21,328/- whereas the appellants already deposited interest Rs.25,007/-	20,00,000/-	1.4.99 to 31.7.99
2.	36-39/2001 dated 26.6.02 and Addendum dated 1.7.02	35,00,000/-	35,00,000/-	1.9.99 to 31.3.2000
3.	49/2002 dated 26.6.02 and Addendum dated 17.7.02	4,19,894/-	4,19,894/-	1.10.99 to 31.12.99

4. The Commissioner (Appeals) by the impugned order reduced the total penalty of Rs.59,19,894/- to Rs.3,00,000/- while holding that the Department had failed to establish mens rea on the part of the assessee.

5. While placing reliance in the decision in the matter **of Union of India vs. Dharmendra Textile Processors** reported in 2008 (231) ELT 3 (SC) and **C.C.& C.E., Coimbatore vs. Kannapiran Steel Re-Rolling Mills** reported in 2011 (263) ELT 22 (SC) submitted that the Commissioner (Appeals) erred in reducing the penalty and ignoring the mandate of the provisions comprised under Rule 96ZO and obligation of the authorities to impose penalty equal to the duty confirmed against the assessee.

6. We have perused the records and the impugned orders placed before us as well as the orders passed by the adjudicating authority with the assistance of the DR in the absence of appearance on behalf of the assessee even though the notices have been duly served. We have also perused the so-called cross-objections which merely relate to attempt to answer the points sought to be raised on behalf of the Department.

7. Only issue arises in the matter is whether the lower authority was justified in reducing the penalty imposed by the adjudicating authority. The records evidently disclose that the adjudicating authority had imposed penalty equivalent to the amount of duty confirmed against the respondents and their failure to pay the same on time. Being so, taking into consideration the mandate of Rule 96ZO and bearing in mind the decision of the Apex Court in **Dharmendra Textile Processors** case, it was necessary for the authorities below to impose penalty equivalent to the duty demand confirmed against the assessee and the same has been further clarified and law in that regard is well settled by the decision of the Apex Court in **Kannapiran Steel Re-Rolling Mills** case. The Apex Court has clearly held thus:-

> ***"9. In order to appreciate the aforesaid contentions of the counsel appearing for the appellant, we have perused the provisions of Rule 96-ZP and compared the said provisions with that of Rule 96-ZQ and Rule 96-ZO. On such appreciation and comparison what we find is that the provisions of Rule 96-ZP are pari-materia and are identical with that of Rule 96-ZQ and Rule 96-ZO.***
>
> ***11. After considering all the concerned aspects, this Court finally held that the plea that Rule 96-ZQ and Rule 96-ZO have a concept of discretion inbuilt cannot be sustained meaning thereby that the said Rules are mandatory and there is no discretion available for reducing the penalty. Provisions of Rule 96-ZP being identical and pari materia with that of Rule 96-ZQ and Rule 96-ZO, the ratio of the aforesaid decision rendered by Three Judges Bench is squarely applicable to the facts and circumstances of the present case. Consequently, we allow these appeals and set aside the order passed by the High Court as also by the Tribunal and restore the order passed by the adjudicating authority, leaving the parties to bear their own costs."***

In view of the said decision of the Apex Court, the impugned order reducing the penalty cannot be sustained is liable to he set aside and penalty imposed by the adjudicating authority is to be confirmed.

8. Accordingly, the appeals succeed. The so-called cross-objections fail. The appeals are therefore, allowed. Cross-objections are dismissed. The impugned order reducing the penalty is hereby set aside and the penalty imposed by the adjudicating authority is restored with consequential relief.

9. The appeals accordingly stand disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Technical Member

scd/