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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/4003/2010-4004/2010 - EX[DB] Date **10/08/2011**

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

To :
M/S N.S. GARMENTS,
K-192, ARJUN NAGAR, SAFDURJUNG ENCLAVE,
NEW DELHI.

M/S N.S. GARMENTS, Appellant

Vs

C.C.E. DELHI II Respondent

I am directed to transmit herewith a certified copy of **Final order No.711-712/ 2011 EX|DB|** dated 28-7-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

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

2. Adv. / Consult
MR.R.S.TANDON
B-39, SFS, SHEIKH SARAI, PHASE-I, NEW DELHI-110017

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.
15. SHRI CHARANJEET SINGH.
GALI NO. 4, MAIN TANK ROAD,
DEV NAGAR, KAROL BAGH. NEW DELHI.

Assistant Registrar
(Excise 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. I

Excise Appeal No. 4003 of 2010

M/s N.S. Garments — Appellant

Versus

CCE, New Delhi — Respondent

Excise Appeal No. 4004 of 2010

Shri Charanjeet Singh — Appellant

Versus

CCE, New Delhi — Respondent

[Arising out of the Order-in-Appeal No. 687-688/CE/D-II/2010 dated 12/11/2010 passed by The Commissioner (Appeals), Central Excise, 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 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? :

Appearance

Shri R.S. Tandon, Adovcate – for the appellant.

Shri S.R. Meena, Authorized Representative (DR) - for the Respondent.

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

DATE OF HEARING : 28/07/2011.
DATE OF DECISION : 28/07/2011.

Final Order No. 711-712/2011-Ex Dated : 28/07/11

Per. Rakesh Kumar :-

M/s N.S. Garments, Safdarjung Enclave, New Delhi (hereinafter referred to as the appellant firm), a proprietary firm of Mrs. Surinder Kaur engaged in manufacture of readymade garments viz. shirts and trousers chargeable to Central Excise duty. Shri Charanjeet Singh is the son of the proprietor of M/s N.S. Garments and was holding the power of attorney for M/s N.S. Garments. He is also the Proprietor of M/s Valour Traders, Delhi. On the basis of intelligence that M/s N.S. Garments are evading Central Excise duty by clandestine clearances without payment of duty, the factory premises of M/s N.S. Garments, premises of M/s Valour at Dev Nagar, Karol Bagh, New Delhi, M/s Manmeet Enterprises, Arjun Nagar, Safdarjung Enclave, New Delhi and residential premises of Shri Charanjeet Singh at B-6/21, Safdarjung Enclave, New Delhi were searched. In course of search of factory and the shop of M/s Valour certain contain incriminating documents were recovered. From the premises of M/s Manmeet Enterprises and M/s Valour finished readymade garments valued at Rs. 44,51,860/- were recovered and since the same were not covered by any invoices, the same were placed under seizure. Statement of Shri Charanjeet Singh was recorded on 20th May, 2002 under Section 14 of the Central Excise Act, 1944, wherein he stated that he being the son of the Proprietor of M/s N.S. Garments is looking after the work of that firm, that M/s N.S. Garments is availing of SSI exemption, that during 2001-2002, the full exemption limit of Rupees One Crore had been crossed in November 2001, but even after November 2001 the goods were cleared without payment of duty and that the goods seized from his shop M/s Valour and M/s Manmeet Enterprises had been manufactured by M/s N.S. Garments cleared without payment of duty. It is in this background that a show cause notice was issued for demand of duty amounting to Rs. 6,85,580/- in respect of the goods cleared without payment of duty, confiscation of the goods valued at Rs. 44,51,860/- which had been seized and imposition of penalty on M/s N.S. Garments under Section 11AC and on Shri Charanjeet Singh under Rule 26 of the Central Excise Rules, 2002. The show cause notice was adjudicated by the Additional Commissioner, vide order-in-original dated 20th April 2006 by which the duty demand as made in the show cause notice was confirmed alongwith interest, penalty of equal amount was imposed on M/s N.S. Garments under Section 11AC, penalty of Rs. 2,00,000/- was imposed on Shri Charanjeet Singh under Rule 26 of the Central Excise Rules, 2002 and the seized goods valued at Rs. 44,51,860/- were ordered to be confiscated with option to be redeemed on a fine of Rs. 7,00,000/-. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal dated 16/7/07 set aside the Joint Commissioner's order and remanded the matter for denovo adjudication after hearing the appellant and examining their submissions. The matter was adjudicated de-novo by Additional Commissioner vide order-in-original dated 15/9/09 by which the duty demand as made in the show cause notice was confirmed alongwith interest, penalty of equal amount was imposed on the appellant firm under Section 11AC, penalty of Rs. 2,00,000/- was imposed on Shri Charanjeet Singh and the seized goods were again ordered to be confiscated with option to be redeemed on a fine of Rs. 7,00,000/-. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal dated 12/11/2010 dismissed the appeal. Against this order of the Commissioner (Appeals), the present appeal has been filed.

2. Heard both the sides.

2.1 Shri R.S. Tandon, Advocate, the learned Counsel for the appellant, pleaded that the entire case against M/s N.S. Garments and Shri Charanjeet Singh is based on the statement of Shri Charanjeet Singh, that in any case since an amount of Rs. 9,00,000/- much more than the duty demand of Rs. 6,85,580/- had been paid even before the issue of show cause notice and this fact is mentioned in order-in-original dated 20th April 2006 itself, the appellant should have been given an option to pay reduced penalty under 1st proviso to Section 11AC and since such an option has not been given, in terms of judgment of Delhi High Court in the case of **K.P. Pouches Pvt. Ltd. vs. Union of India** reported in **2008 (228) E.L.T. 31 (Del.)**, the benefit of reduced penalty under 1st proviso to Section 11AC cannot be denied, that in view of this penalty imposable on the appellant firm would be only 25% of the duty demand of Rs. 6,85,580/-, that when penalty under Section 11AC has been imposed on the appellant firm, the imposition of penalty of Rs. 2,00,000/- on Shri Charanjeet Singh was not called for, and that in view of this, the impugned order imposing penalty equal to the duty demand on the appellant firm under Section 11AC and penalty of Rs. 2,00,000/- under Rule 26 of the Central Excise Rules on Shri Charanjeet Singh is not correct.

2.2 Shri S.R. Meena, the learned Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals).

3. We have carefully considered the submissions from both the sides and perused the records.

4. The duty demand of Rs. 6,85,580/- in respect of the goods valued at Rs. 44,51,860/- had been confirmed on the basis of statement dated 20th May 2002 of Shri Charanjeet Singh that these goods had been cleared without payment of duty and without issue of any invoice. This statement of Shri Charanjeet Singh has not been retracted by him and in this statement he has clearly admitted that during 2001-2002 even after crossing the SSI exemption limit of Rs. 1,00,00,000/- the goods were being

cleared without payment of duty and without issue of invoices. In view of this, there is no infirmity in the impugned order confirming the duty demand of Rs. 6,85,580/- in respect of the goods under seizure and also upholding the confiscation of the goods under Rule 25. However, since admittedly the entire amount of duty alongwith interest had been paid before the adjudication of the matter, an option should have been given to the appellant firm to pay reduced penalty under 1st proviso to Section 11AC, by paying the same within 30 days from the date of communication of the order. But, since such an option was not given in the adjudication order, in accordance with the judgment of Hon'ble Delhi High Court in the case of **K.P. Pouches Pvt. Ltd. vs. Union of India** (supra), the option to pay reduced penalty under proviso to Section 11AC cannot be denied and accordingly the penalty on M/s N.S. Garments under Section 11AC is reduced to 25% of the duty demand of Rs. 6,85,580/-, which must be paid forthwith.

5. As regards penalty under Rule 26 of the Central Excise Rules on Shri Charanjeet Singh, since he dealt with the excisable goods which he knew or had reason to believe were liable for confiscation, penal provisions of Rule 26 would be attracted and as such penalty on him under this Rule is upheld. However, keeping in view of the fact that the entire duty demand alongwith interest had been paid even before the issue of show cause notice, the penalty amount on him is reduced to Rs. 50,000/-.

6. Both the appeals stand disposed of, as above.

(Operative part of the order pronounced in the open court.)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK