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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/642 /2006-644 /2006 - EX[DB] Date **24/11/2011**

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

To :
M/S VIR ELECTRICALS
E-669, DSID, NARELA DELHI

M/S VIR ELECTRICALS Appellant

Vs

C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 959-961/ **2011 EX|DB|** dated 03-11-11 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.V. LAXMIKUMARAN~~
~~B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029~~
SH. K.K. ANAND, ADV.,
A-103, DEFENCE COLONY,
N. DELHI-24

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. SH..SANDEEP GUPTA,
M/S VIR ELECTRICALS
E-669, DSIDC, NARELA, DELHI
15. MR. NAVEEN GUPTA
10, COMMISSIONER LANE,
CIVIL LINES, DELHI

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.I

Date of Hearing: 3.11.2011

E/Appeal No. 642/2006

(Arising out of order in original No.153/2005 dated 28.11.05 passed by the Commissioner of Central Excise, New Delhi)

M/s Vir Electricals — Appellants

Vs

CCE, Delhi — Respondent

E/Appeal No. 643/2006

Mr. Naveen Gupta — Appellant

Vs

CCE, Delhi — Respondent

E/Appeal No. 644/2006

Sh. Sandeep Gupta
M/s Vir Electricals — Appellants

Vs

CCE, Delhi — Respondent

Appeared for the Appellant: Shri K.K. Anand, Advocate
Appeared for the Respondent: Shri , DR

Coram: **Hon'ble Ms. S.S. Kang, Vice President**
Hon'ble Mr. Mathew John, Member (Technical)

FINAL ORDER No. 959-961/2011-EX

Per S.S. Kang:

Heard both sides.

The appellants filed these appeals against the common impugned order. Therefore, they are being taken up together for disposal.

2. The Commissioner of Central Excise confirmed demand of Rs. 1,07,02,758 along with interest and penalty of equal amount on M/s Vir Electricals and also imposed penalties on the other applicants. The brief facts of the case are that the officers of Revenue Department searched the premises of M/s Naveen Electricals as well as M/s Vir Electricals and seized certain private records showing the clearance of goods manufactured by M/s Vir Electricals without payment of duty. The demand is confirmed on the basis of the quantities mentioned in those private records which were not reflected in the statutory record of M/s. Vir Electricals.

3. The contention of the appellants is that the impugned order is passed ex-parte. The appellants approached the Settlement Commission to settle the issue where they admitted duty liability of Rs. 30,85,770/-. However, the Settlement Commission rejected their application on the ground that the appellant was not a registered unit with the Central Excise Authorities. Subsequent to this, appellants asked for time for filing reply and the adjudicating authority without considering the request, passed the impugned order.

4. The contention of the appellant is that challans on the basis of which the duty is now confirmed were ~~also cannot~~ taken as ~~into~~ gen
clearance without payment of duty
~~consideration~~on. Some quantity of goods ~~which~~ were cleared on payment

of duty under the excise invoices and this fact was not taken into consideration while passing the impugned order. It is also submitted that ~~on~~ upto 31.3.2001, the Revenue allowed discount upto 60%, but after 31.3.2001, this discount was reduced to 50%. M/s Naveen Electricals also made purchases from appellants M/s Vir Electicals whereas they were also dealing with the goods manufactured by other manufacturers. So it cannot be said that any goods seized from the premises of M/s Naveen Electicals are manufactured by M/s Vir Electricals. The statements made by the appellants were retracted and retraction has not been taken into consideration while passing the impugned order. The appellant had no capacity to ~~not~~ manufacture~~d~~ the quantity of goods on which the duty has been demanded.

5. The appellant also claimed the benefit of small scale notification which was denied on this ground that the clearances of year 2002-03 had crossed the limit prescribed under the Notification. Therefore, for the subsequent, year the appellants are not entitled to the benefit of small scale notification.

6. The contention is that the appellants admitted their liability to the extent of Rs. 30,85,770/- before the Settlement Commission. It is also submitted that in case the matter is remanded to the adjudicating authority, the appellants will not ask for cross examination or any documents. The appellant also claimed cum duty benefit.

7. Revenue has submitted that ample opportunity was granted by the adjudicating authority. The appellants failed to reply to the show

cause notice or appeared for personal hearing and the impugned order is rightly passed which has relied upon the confessional statement made by the proprietor of appellant firm.

8. We find that the Settlement Commission has rejected their declaration in the month of April 2005 There~~fore~~after, the appellants approached the Hon'ble High Court by way of Writ Petition which was dismissed ~~as withdrawn~~ in August, 2005. After this, the adjudicating authority fixed the date of hearing on 7.11.2005. The appellants vide letter dated 3.1.05 sought time. The appellant also sent a fax message on 7.11.05 seeking time. All these requests were not taken into consideration by the adjudicating authority. The issue raised by the appellants requires verification which can be done only by the adjudicating authority. In these circumstances the impugned order is set aside and the matter is remanded to the adjudicating authority to decide the matter afresh.

9. The appellants are directed to appear before the adjudicating authority on 9.12.2011 with reply to show cause notice and thereafter the adjudicating authority shall fix the date of hearing and decide the issue in accordance with law.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Technical Member
MPS*

(S.S. KANG)
Vice President