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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 **01/12/2011**

Appeal No. E/2127/2005 - EX[DB]

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

To :
M/S INDIA FORGE & DROP STAMPINGS LTD.
PLOT NO-28,SECTOR-6,FARIDABAD
121006

M/S INDIA FORGE & DROP STAMPINGS LTD. Appellant
Vs
C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1002/2011 **2010 EX|DB|** dated 23.11.2011 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.A. G. KULKARNI
61/12,HANUMAN NAGAR, S.B.NAGAR, PUNE.

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 Copv
13. Guard file

(Excise Appeal Branch)
Assistant Registr

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH

Court No.3

Excise Appeal No.2127 of 2005

(Arising out of Order-in-Appeal No.46/ce/Appl/DLH-IV/2005 dt.25.4.05 passed by the CCE(A), Delhi-I)

Date of Hearing/Decision: 23.11.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, 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?	No
2	Whether it should be released under Rule 27 of the 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

M/s.India Forge & Drop Stampings Ltd. — Appellant
Vs.
CCE, Delhi-I — Respondent

Present for the Appellant: Shri A.G.Kulkarni, CA
Present for the Respondent: Shri R.K.Verma, SDR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

FINAL **ORDER NO.** 1002/2011-EX

PER: ARCHANA WADHWA

The appellant are engaged in the manufacture of steel forgings chargeable to Central Excise Duty under heading 87.08 of the Central Excise Tariff and they also avail the facility of Cenvat Credit of duty on the inputs and capital goods used in or in relation to manufacture of the finished products. During the visit of the Jurisdictional Central Excise officers to the appellant's factory on 11/10/2000, it was found that while the appellant had taken Cenvat credit in respect of capital goods during the period from 30th April 1996 to 31st March, 2000, the capital goods involving Cenvat credit of Rs.22,06,009/- were not available in the factory. It is on this ground that a show cause notice dated 28th June, 2001 was issued to the appellant for recovery of capital goods cenvat credit amounting to Rs.22,06,009/- alongwith interest and also imposition of penalty on them under Rule 57AH/11AC of the Central Excise Rules, 1944.

2. The show cause notice was adjudicated by the Assistant Commissioner vide order-in-original dated 28/09/04 by which the Cenvat credit demand of Rs.22,06,009/- alongwith interest was confirmed against the appellant and penalty of equal amount was imposed on them under Rule 57AH of the Central Excise Rules, 1944. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal dated 25/4/05 gave only a partial relief but upheld the duty demand of Rs.21,75,386/- and accordingly reduced the penalty under section 11AC to Rs.21,75,386/-. It is against this order of the Commissioner (Appeals) that the present appeal has been filed.

3. Shri A.G.Kulkarni, learned Chartered Accountant appearing for the appellant is not disputing confirmation of demand of duty against them. However, he submits that the company is almost 35 years old and is having its main manufacturing unit in Chennai in addition to present unit, which was ~~also~~ created under the working of functional

director. It was the director who had indulged in the clearance of capital goods. He submits that as soon as the main head office of the company came to know of malfunctioning, they filed an FIR with the police on 26.09.2000. In fact, it is the appellant who had detected about contravention and filed FIR. It was only after filing of FIR, the Revenue visited their factory premises and started proceedings. In view of the above, he draws our attention to the fact that an FIR was filed on 26.09.2000 whereas panchnama was drawn on 11.10.2000. In such scenario, he submits that the penalty be set ~~side~~ aside.

4. Countering the arguments, learned SDR appearing for the Revenue submits that the penalty stands imposed upon the manufacturing unit, which is admittedly involved in clandestine activity. As such, the submission of the learned representative that penalty be set aside, cannot be accepted.

5. After appreciating the submissions made by both sides, we find that the fact of clandestine clearance of the capital goods, after availing the modvat credit does not stand disputed by the chartered accountant. Consequently, the duty confirmed against the applicant is also being disputed by him. We accordingly, confirm the demand of duty, as not contested.

6. We further note that penalty stands imposed upon the appellant under provision of Rule 57AH/57U of Central Excise Rules, 1944 read with section 11AC of Central Excise Act, 1944. As the appellant had admitted involvement in the clandestine removal of modvatable capital goods, without reversing modvat credit, we are of the view that the appellant is liable to duty. Whether such

contravention was being committed with or without the knowledge of the managing director is of no consequence. As such, we hold that the appellant is liable to penalty.

7. However, we find that while imposing penalty under the said rules read with section 11AC neither the Additional Commissioner nor Commissioner (Appeals) has given any option to the appellant to pay entire dues in addition 25% of penalty within thirty days in which case the penalty shall stand reduced to 25%. The Tribunal in the case of CCE, Vadodaa vs. Swati Chemical Industries Ltd.-2009 (248) ELT 421 (Tri.-Ahmd.) and Hon'ble Gujarat High Court in the case of Harish Silk Mills as reported in 2010 (255) ELT 393 (Guj.) held that where no such option stands provided by the lower authorities, the said option can be extended by the higher appellate forum. We further note that the entire dues stands deposited by the appellant before issuance of show cause notice. As such, we hold that if the appellant deposits 25% of the penalty alongwith interest if any within thirty days from the communication of passing of the present order, the penalty shall stand reduced to 25%.

8. The appeal is disposed of in the above terms.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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