14

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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/1077/2005 - EX[DB]

Date 30/01/2012

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA

Appellant

Vs

Respondent

M/S. AMAR WHEELS PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order No. A/54/ 2012 EX[DB]** dated 25-1-12 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. AMAR WHEELS PVT. LTD.
C-194,PHASE-VII,FOCAL POINT,
LUDHIANA

2. Adv. / Consult SH. K.K. ANAND, ADV.,
A-5, BASEMENT,
LAJPAT NAGAR-III,
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-3
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

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1077 of 2005

[Arising out of Order-in-Appeal No. 685/CE/Appl/Ldh/2004 dated 31.12. 2004 passed by the Commissioner of Central Excise (Appeals), Ludhiana]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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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

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Commissioner of Central Excise Ludhiana — Appellants

Vs.

M/s. Amar Wheels P. Ltd. — Respondent

Appearance:

Shri N. Pathak, SDR for the Appellants
Shri K.K. Anand, Advocate for the Respondents

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing : 17.11.2011
Date of decision : 25.01.2012

FINAL **ORAL ORDER NO. A/54/2012-EX (BR)**

Per Archna Wadhwa (for the Bench):

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We have heard Shri N. Pathak, learned SDR and Shri K.K. Anand, learned advocate for the respondents.

2. Briefly stated the respondents are engaged in the manufacture of chain wheels and crank (cycle part) falling under Chapter 87 of Central Excise ~~Rules~~ Tariff, 1985. They are claiming rebate of duty paid on inputs raw material used in the manufacture of goods under the provisions of Notification No. 41/2001 CE(NT) dated 26.6.2001 issued under Rule 18 of Central Excise (No.2) Rules, 2001. They were granted permission by the Deputy Commissioner, Central Excise Division II, Ludhiana subject to fulfilment of certain conditions prescribed under Notification No. 41/2001-CE(NT). As per condition 4(c) of the Notification No.41/2001 CE(NT) dated 26.6.2001 any waste arising from processing of materials is to be removed on payment of duty as if such waste is manufactured or processed in the factory of the manufacturer or processor. During 4/2003 to 8/2003 they cleared 403.775 MT of scrap valued Rs.37,06,947/- without payment of Central Excise duty amounting to Rs.5,93,111/- for which show cause notice dated 30.3.2004 was issued to them. After adjudication process

demand for duty of Rs.5,93,111/- was confirmed against them under Section 11A of the Act and penalty of Rs.5,93,111/- was also imposed under Rule 25 of Central Excise Rules, 2002 with the order to recover interest under Section 11 AB of the Act.

3. The said order of the original adjudicating authority was appealed against by the respondents before Commissioner (Appeals). Various pleas and submissions were raised before him. The appellate authority, however relied upon the earlier order in appeal passed by Commissioner (Appeals) and held in favour of the respondents. For better appreciation, we reproduce relevant paragraphs from his order as under:

> "*It is observed that the issue already stand decided in favour of the appellant vide order-in-appeal No. 450/CE/Appeal/Ldh/04 dated 30.6.2004. In the above said order-in-appeal dated 30.6.2004, it has been held that small scale exemption admissible to the appellant. During the relevant period value of waste and scrap cleared by the appellant, as claimed by them was Rs.41,24,973/-. During the year 2003-2004, as per Notification No. 8/2003-CE, goods upto the value of Rs. one crore were chargeable to nil rate of duty. Thus no duty is demandable from the appellant. Accordingly, penalty imposed upon the appellant is also set aside. Since no duty is demandable from the appellant on this count so I find no need to discuss the other grounds of appeal.*"

4. We find that the earlier order in appeal No. 450/CE/APPL/LDH/04 dated 30.6.04, relied upon by Commissioner (Appeals), was also put to challenge by the Revenue before Tribunal.

The Revenue's appeal stand rejected as reported in [2009 (245) ELT 736 (Tri-Delhi)]. For better appreciation, we reproduce para 2 of the said decision.

> " *2. We have heard both sides. The Revenue relies upon clause 4(c) of Notification No. 41/2001-C.E. (N.T.) which stipulates that any waste arising from processing of materials may be removed on payment of duty as if such waste is manufactured or processed in the factory of the manufacturer or processor, to hold that waste was required to be cleared by the assessees only on payment of duty. On the other hand, we find that there is no bar in Notification No. 41/2001-C.E. (N.T.) to the availment of benefit to waste and scrap under any other Notification. In this case, there is no dispute that the assessees' value of clearances during the years in question was below the ceiling limit prescribed in the SSI exemption Notification and further, as pointed out in the cross-objection by the assessees, benefit of Notification No. 89/95-C.E., dated 18-5-1995 granting exemption from payment of duty on waste and scrap arising in the course of manufacture of exempted goods is available to them as cycle parts exported by them are not liable to duty. Therefore, there is no error in the impugned orders so as to call for any interference therewith. We accordingly uphold the impugned orders and reject the appeals.*"

5. Inasmuch as the issue stands decided in favour of the respondents and by following the earlier decisions of the Tribunal, in the same respondent's case, we reject the present appeal filed by the Revenue.

(Pronounced in the open Court on 25/1/12)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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