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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/2207/2005 - EX[DB] Date **26/03/2012**

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

M/S LOVELY PROCESSORS & FABRICS PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/351/ 2012 EX[DB]** dated 12-3-12 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 LOVELY PROCESSORS & FABRICS PVT.LTD.
B-55,PHASE-VII,FOCAL POINT
LUDHIANA

2. Adv. / Consult SH. J. MAHAJAN, ADV., 157 THIRD FLOOR, VINOBHAPURI, LAJPAT NAGAR-II, 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. 2207 of 2005

Commissioner of Central Excise
Ludhiana — Appellants

Vs.

M/s. Lovely Processors & Fabrics
(P) Ltd. — Respondent

Appearance:

Shri S. Jain, DR for the Appellants
None for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 12.03.2012

FINAL **ORAL ORDER NO. A/351/2012-EX (BR)**

Per Archana Wadhwa (for the Bench):

Being aggrieved with the order passed by the Commissioner (Appeals) vide which while confirming the demand of duty against the respondents, the appellate authority has set aside the imposition of penalty upon the respondents on the ground that the entire duty was deposited by the respondents before the issuance of show cause notice and as per declaration of law by the Larger Bench in the case of CCE vs. Machino Montel reported as [2004 (168) ELT 466 (Tri-LB)], no penalty is imposable.

2. Apart from the fact that the said Larger Bench decision was set aside by the Hon'ble Punjab & Haryana High Court, we find that the law on the issue is no more res integra. Penalty to the extent of 100% of duty is required to be imposed under Section 11 AC of Central Excise Act in terms of Hon'ble Supreme Court decision in the case of Dharmendra Textile Processors [2008 (231) ELT 3 (SC)]. As such the penalty to the extent of duty amount of Rs.27,908/- is required to be upheld.

3. However, on going through the order of Deputy Commissioner, we find that the respondents had already deposited 25% of total penalty of Rs.27,908/- imposed on him and in terms of first proviso to Section 11AC of the Act, the said quantum of penalty to the extent of 25% of duty amount is required to be upheld. We order accordingly.

4. Revenue's appeal is disposed of in the above terms.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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