IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:26.03.2012
Date of decision:26.03.2012

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. 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 should 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 Departmental authorities?	

Excise Stay Application No.3290 of 2011 in
Appeal No.2538 of 2011

M/s.Micro Super Cables (P) Ltd. Unit-II ...Appellants

Vs.

CCE, Delhi-II ...Respondent

Excise Stay Application No.3389 of 2011 in
Appeal No.2603 of 2011

Shri Harish Chand Goyal ...Appellants
Director

Vs.

CCE, Delhi-II ...Respondent

Excise Stay Application No.3390 of 2011 in
Appeal No.2604 of 2011

Shri Amit Gupta, Director ...Appellants

Vs.

CCE, Delhi-II ...Respondent

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

Appearance:
Shri Piyush Kumar, Advocate for the appellants.
Shri Sanjay Jain, AR for the respondent.
STAY Oral Order No. 587-589/2012-EX (BR)
FINAL Oral Order No. A/391-393/2012-EX(BR)

<u>Per Rakesh Kumar:</u>

The appellant are manufacturers of insulated wires chargeable to central excise duty. On 7.1.2009, their manufacturing unit situated at 36/20, Julfe Bengal, G.T. Road, Shahdara, Delhi was visited by the jurisdictional Central Excise Officers. At the time of visit, it was found that statutory central excise records like production register, etc. were not available in the factory. Shri Amit Gupta, Director of the appellant company who was present at the time of officers' visit, stated that all the records had been taken by his Accountant and kept at some other place. Inquiry was also made with Shri Harish Chand Goyal, Director of the appellant unit, who could not explain as to why the statutory records have not been kept in the factory. Subsequently, the ~~Products~~ Production Register (RG -1) and raw material register was resumed from the Head Office of the Appellant's company and it was found that the finished goods found in the factory were not recorded in the RG-I Register. In view of this, the goods found in the factory were placed under seizure. The jurisdictional Asstt. Commissioner after issue of show cause notice, issued order dated 26.08.2010 ordering confiscation of the seized goods valued at Rs.19,19,633/- with option to be redeemed on payment of redemption fine of Rs.2,25,000/- plus duty leviable and besides this, while imposed penalty of Rs.2,05,137/- on the appellant company, penalty of Rs.20,000/- each was imposed on Shri Amit Gupta and Shri Harish Chand Goyal, Directors of the appellant company. On appeal to the Commissioner (Appeals), the above order-in-original was upheld vide order-in-appeal dated 1.8.2011. Against this order, the present appeals along with stay applications have been filed.

2. Heard both sides.

3. It was pointed by the appellants counsel, Shri Piyush Kumar, Advocate, that since these matters do not involve any question relating to rate of duty or valuation and the redemption fine and penalty is also within Rs.10 Lakhs, the same are within the jurisdiction of Single Bench. However, since even a Single Bench matters can be disposed of by a Division Bench and since the bench was of the view that these matters, though listed for hearing of stay applications, can be disposed of finally, with the consent of both the sides, these matters were heard by the bench for final disposal, after waiving the requirement of pre-deposit.

4. The ld. Counsel for the appellant pleaded that in this case after conclusion of investigation, a show cause notice alleging duty evasion had been issued against the main appellant, M/s. Micro Super Cables (P) Ltd. against which the appellant have gone to the Settlement Commission and that matter has been settled by the Settlement Commission and that these appeals are against the order of the confiscation of seized goods and imposition of penalty. He pleaded that the goods seized were not liable for confiscation and there was no justification for imposition of penalty on the appellant company and his directors, as there were genuine reasons for non-entry of the goods in the RG-I Register.

5. The learned Departmental Representative defended the impugned order by reiterating the findings of the Commissioner (Appeals) in it.

6. We have carefully considered the submissions from both the sides and perused the records. We find that the appellants do not dispute the fact that at the time of the officers' visit to the factory, the statutory records like production register, raw material register, invoice books, etc. were not there in the factory and the same were located subsequently at the Head Office and that it was found that the goods found in the factory, which represented several day's production, had not been entered in the RG-I register. In the background of the fact that an allegation of duty evasion had been made against the appellant's company, in respect of which they had gone before the Settlement Commission and an order settling their duty liability has been passed by the Settlement Commission, unaccounted goods were obviously meant for clandestine removal without payment of duty. Non-accountal of excisable goods produced by a manufacturer in the prescribed RG-I register is contravention of the provisions of Rule 10 of the Central Excise Rules, which attracts confiscation of the unaccounted goods and penlty on the manufacturer under Rule 25 (1)(b) ibid. Therefore, the unaccounted goods under seizure have been correctly ordered to be confiscated and penalties have been correctly imposed on the appellant company and its

Directors. However, looking to the fact that appellant company had gone to the Settlement Commission and have discharged the duty liability as determined by the Settlement Commission, the redemption fine is reduced to Rs.1,50,000/- and penalty on the appellant company and its Directors is reduced as under:-

(i)	M/s. Micro Super Cables (P) Ltd.Unit-II	Rs.1,25,000/-
(ii)	Shri Harish Chand Goyal, Director	Rs.10,000/-
(iii)	Shri Amit Gupta, Director	Rs.10,000/-

7. The appeals and stay applications stand disposed of as above.

[pronounced in the open court]

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp.