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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 14/05/2012

Appeal No. E/233-234 /2005 - EX[DB]

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

To :
M/S BAJAJ PAPER MILLS ← 14. M/S. M. BAJAJ PAPERS
VILLAGE MEDAWAS, POST OFFICE SAMSHPUR,
TEHSIL&DISTT.GURGAON

M/S BAJAJ PAPER MILLS Appellant

Vs

C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/547-548 2012 EX|DB|** dated 10-5-12 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 III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)
2. Adv. / Consult SH. N. MULLICK, ADV,
C/O APPELLANT
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I
DATE OF HEARING : 03/05/2012.
DATE OF DECISION : 14/5 /2012.

Excise Appeal No. 233-234 of 2005

[Arising out of the Order-in-Original No. 35 & 34/2004 dated 31/08/2004 passed by The Commissioner of Central Excise (Appeals), Delhi – III, Gurgaon.]

For Approval and signature :
Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri 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 would 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 Department Authorities?	:

M/s Bajaj Paper Mills]
M/s M. Bajaj Papers] Appellants

Versus

CCE, Delhi – III, Gurgaon Respondent

Appearance

Shri N. Mullick, Advocate– for the appellant.

Shri I. Beg, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/547-548/2012-EX(PB) Dated : ______

Per. Rakesh Kumar :-

The facts leading to filing of these appeals are, in brief, as under.

1.1 Both the appellants manufacture writing and printing paper chargeable to Central Excise Duty under sub-heading 4802.99 of the Tariff. Both the appellants during 1994-1995 period were availing benefit of Notification No. 1/93-CE, as amended by Notification No. 59/94-CE and in addition to this, were also availing the benefit of Notification No. 22/94-CE, as amended by Notification No. 88/94-CE. The second exemption was in respect of the clearances exceeding Rs. 3,00,000/- in a financial year. The Notification No. 22/94-CE, which prescribed a concessional rate of duty, was further amended by Notification No. 22/95-CE dated 16/3/95 and as per the amended Notification, the benefit of exemption Notification No. 22/94-CE would not be available to a manufacturer who in a same financial year was also availing the benefit of Notification No. 1/93-CE. Since during 1994-1995 both the appellants were availing of the Notification No. 22/94-CE, with effect from 16/3/95, they were no longer eligible for Notification No. 22/94-CE, as amended. However, both the appellants being not aware of this amendment, continued to avail of this exemption. The department, therefore, issued show cause notice dated 7/1/97 to M/s Bajaj Paper Mills for recovery of short paid duty amounting to Rs. 1,33,829/- alongwith interest and also for imposition of penalty under Section 11AC and issued another show cause notice dated 13/6/97 to M/s M. Bajaj Papers for recovery of short paid duty amounting to Rs. 1,36,861/- during the period from 16/3/95 to 31/3/95 and also for imposition of penalty. The Jurisdictional Commissioner, Central Excise confirmed above-mentioned the duty demands against the appellants and also imposed penalty of equal amount on them under Rule 173Q of Central Excise Rules. Against these orders of the Commissioner, these appeals have been filed.

2. Heard both the sides.

3. Shri Naveen Mullick, Advocate, the learned Counsel for the appellant, while not disputing that the appellants during the period from 16/3/95 to 31/3/95 availed of the exemption Notification No. 22/94-CE to which they were no longer entitled in view of amendment of this notification by Notification No. 22/95-CE, pleaded that both the demands are time barred as during the period of dispute, the appellants had declared these clearances in the RT-12 returns filed by them and in the classification declarations filed by them they had also declared that they are availing of duty exemption under Notification No. 22/94-CE. He pleaded that during the period of dispute, the RT-12 returns were required to be examined and assessed by the Jurisdictional Range Officer and the short payment could have been pointed out by them, but this was not done. He, therefore, pleaded that in view of these circumstances, the appellants cannot be accused of fraud, wilful misstatement, mis-declaration, suppression of fact or contravention of the provisions of Central

Excise Rules with intent to evade the payment of duty and, hence, neither longer limitation period under proviso to Section 11A (1) can be invoked for recovery of short paid duty nor penalty under Rule 173Q would be justified. He, therefore, pleaded that the impugned orders are not correct.

4. Shri I. Beg, the learned Senior Departmental Representative, defended the impugned orders by reiterating the findings of the Commissioner in it and pleaded that while in the RT-12 returns, the fact regarding availment of exemption under Notification No. 1/94-CE as well as Notification No. 22/94-CE had not been declared, that RT-12 returns for the relevant month do not mention any exemption notification, that in the classification declaration filed by them, the appellant had only mentioned Notification No. 88/94-CE which is only the amending notification of Notification No. 22/94-CE, that the appellants have thus suppressed the relevant fact from the department and, hence, the extended period under proviso to Section 11A (1) has been correctly invoked and penalty has been correctly imposed on the appellant.

5. We have carefully considered the submissions from both the sides and perused the records.

6. The fact that during period from 16/3/95 to 31/3/95 the appellants were not eligible for Notification No. 22/94-CE on account of its amendment by Notification No. 22/95-CE dated 16/3/95 is not disputed and thus as such there is no dispute

about the fact of wrong availment of exemption notification resulting in short payment of duty. The only point of dispute is as to whether the longer limitation period under proviso to Section 11A (1) could be invoked and whether in the facts and circumstances of the case, imposition of penalty equal to the duty demand would be justified.

7. On going through the RT-12 return for March 1995 filed by the appellants, we find that in the return, the concessional rate of duty of 5% at which the duty was paid is mentioned and this concessional rate was available under Notification No. 22/94-CE, though this notification is not mentioned. However, it is not denied that the appellants had filed classification declarations under Rule 173B in which they had declared the availment of exemption under Notification No. 1/93-CE as also Notification No. 88/94-CE which had been received in the Range Office in June, 1995. The department's contention is that mentioning Notification No. 88/94-CE which is amending notification of the main Notification No. 22/94-CE is not the correct declaration. We do not agree with this view, as Notification No. 88/94-CE is always required to be read with the main Notification No. 22/94-CE and anybody who is familiar with this subject, would have known that the appellant had been availing Notification No. 22/94-CE besides availing Notification No. 1/93-CE. Moreover, we also find that M/s M. Bajaj Papers in the CL effective from 23/4/94 filed with the range office had declared availment of Notification No. 59/94-CE (amending notification of Notification No. 1/93-CE) with

Notification No. 22/94-CE}. Therefore, the Department could not be unaware of the appellant's availment of Notification No. 22/94-CE. In this background, while scrutinising the RT-12 returns, the Jurisdictional Range Officer could have detected the short payment, as they are not expected to blindly sign the same. In view of these circumstances, keeping in view the judgments of the Apex Court in the case of **CCE vs. Chemphar Drugs & Liniments** reported in **1989 (40) E.L.T. 276 (S.C.)** and in the case of **Padmini Polymers Ltd. vs. CCE, New Delhi** reported in **2007 (215) E.L.T. 392 (Tri. – Del.)** and we are of the view that the appellants cannot be accused of having committed fraud, wilful misstatement. suppression of fact or deliberate contravention of the provisions of Central Excise Rules with intent to evade the payment of duty so as to attract the proviso to Section 11A (1) and the penal provisions of Rule 173Q (1) (d). In view of this, the impugned order confirming the duty demands and imposing equal penalty are not sustainable, The same are set aside. The appeals are allowed.

(Order pronounced in open court on 14/ 5 /2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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