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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/857 /2005 - EX[DB] Date **23/05/2012**

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I Appellant

Vs

M/S AGARWAL METAL INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No.598 2012 EX|DB|** dated 29/2/2012 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 AGARWAL METAL INDUSTRIES
5, OLD INDUSTRIAL AREA,
DHOLPUR (RAJASTHAN)

2. Adv. / Consult SH. UDIT JAIN ADV.
C/O MR.K.K ANAND ADV.
A-5,BASEMENT,LAJPAT NAGAR-III NEW 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 Registra
(Excise Appeal Bra

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

Excise Appeal No. 857 of 2005

[Arising out of Order-in-Original No. 366 (MPM)/CE/JPR-I/ 2004 dated 3.12.2004 passed by the Commissioner of Central Excise(Appeals I), Jaipur]

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, Jaipur I — Appellants

Vs.

M/s. Agarwal Metal Industries — Respondent

Appearance:
Shri P.K. Sharma, AR for the Appellants
Shri Udit Jain, Advocate for the Respondent

CORAM:

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

Date of Hearing : 29.2.2012
Date of decision : .2012

FINAL **ORAL ORDER NO. A/598/2012-EX(BR)**

Per Archana Wadhwa (for the Bench):

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has preferred the present appeal. We have heard both sides duly represented by Shri P.K. Sharma, AR appearing for the Revenue and Shri Udit Jain, Advocate appearing for the appellant.

2. As per facts on record, the respondents are engaged in the manufacture of aluminium utensils. During the course of manufacture of utensils, aluminium circles came into existence. Inasmuch as aluminium utensils were ~~excepted~~ exempted from payment of duty, the Revenue entertained a view that aluminium circles which came into existence during intermediate stage are required to pay duty. Accordingly, proceedings were initiated against them by way of issuance of show cause notice dated 29.4.03 for confirmation of demand of duty of Rs.2,86,219/- for the period April, 88 to March, 2008. The said show cause notice culminated into order passed by the original adjudicating authority confirming the demand and imposing penalty.

3. On appeal against the above order, Commissioner (Appeals) held against the respondents on merits. However, he extended relief on the

point of limitation by taking into note various submissions of the assessee. The demand within limitation period was upheld and penalty to the extent of Rs.5,000/- was confirmed.

Hence, the present appeal of the Revenue.

4. For better appreciation, we reproduce para 11 from the Commissioner (Appeals)' order :

> "11. As regards time bar aspect is concerned, the appellant contended that they have sought clarification regarding excisability on aluminium utensils from the Section Officer and enclosed photocopy of the letter dated 15.4.97 and relied upon decision of Hon'ble Supreme Court delivered in case M/s. Surat Textiles Mills Ltd. & ors. Reported in 2004 (62) RLT - 351 (SC) wherein Hon'ble Supreme Court has held that "Limitation – Demand –Section 11A of Central Excise Act, 1944 – CEGAT has failed to appreciate and follow the ratio of several judgements of this Court wherein it is laid down that if the assessee acts honestly & under bonafide belief that manufactured products are exempted from duty, the larger period of limitation is not attracted and Tribunal's decision in case of M/s. Tirupati Udyog Ltd. & others reported in 2004 (62) RLT 742 (CESTAT-Del) wherein Tribunal has held that "Limitation – Demand –Section 11A of Central Excise Act 1944, 1944- Bonafide belief – in view of the decisions cited by the appellant's counsel in relation to liability to pay duty on aluminium circles, there was scope for doubt whether duty was payable or not – extended period of limitation not invokable – case remanded for recomputation of duty within normal period under section 11A". The appellants also relied upon another

Tribunal's decision delivered in case of M/s. Sandur Laminates Ltd., reported in 2001 (133) ELT 107 (Tribunal-Bang) wherein Tribunal has held that assessee seeking clarification on certain issues from the Department –action against him later on same issue – extended period not invokable. I find that the appellant has, vide their letter dated 15.04.97 has asked clarification on the excisability on aluminium utensils being manufactured by them and the Section Officer also submitted his reply thereof, therefore, I hold that the appeal is covered by the Tribunal's decision delivered in case of M/s. Sandur Laminates Ltd. and Supreme Court's decision delivered in case of M/s. Surat Textile Mills Ltd. (supra), therefore the demand beyond the normal period as provided under section 11A of the Central Excise Act, 1944 is time barred, as the manufacture of utensils from aluminium scrap was very much in the knowledge of the Department, therefore, penalty imposed under section 11AC of the Act is also set aside."

5. As is clear from the above, Revenue was in the knowledge of the fact that the appellant is manufacturing aluminium utensils. Mere fact that the appellant never disclosed the fact of emergence of aluminium circles, during the course of manufacture of utensils, cannot be held to be a factor so as to attribute any malafide to the respondents with an intent to evade payment of duty. Emergence of aluminium circles during the manufacture of aluminium utensils is a fact which is expected to be known to the Revenue. In these circumstances, we do not find

any infirmity in the order of Commissioner (Appeals) and accordingly, reject the appeal filed by the Revenue.

(Pronounced in the open court on 18/5/12)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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