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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

COD Application No. : E/COD/63/2005
Appeal No. : E/595/2005-EX[DB]

Dated: **23/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E Bhopal
Hoshangabad Road, 48, Administrative
Area, Area Hills, Bhopal (M.P.) 462011

C.C.E Bhopal (Appellant)

VS

PERMALI WALLACE PVT. LTD. (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/839/2012-EX[DB]** dated **17/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
PERMALI WALLACE PVT. LTD.
Hoshangabad Road, Bhopal, M.P.

2. Advocate(s) / Consultant(s): SH. B.L. NARASIMHAN, ADV, B-6/10, S.J. ENCLAVE, N. DELHI-29

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Gaurd 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/DECISION : 17/07/2012.

Excise Appeal No. 595 of 2005

CCE, Bhopal — Appellant

Versus

M/s Permali Wallace Pvt. Ltd. — Respondent

[Arising out of the Order-in-Appeal No. 746-CE/BPL/2004 dated 29/10/2004 passed by The Commissioner (Appeals-II), Customs & Central Excise, Bhopal.]

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? :

Appearance

Shri Amresh Jain, Authorized Representative (DR) – for the Appellant.

Shri B.L. Narasimhan, Advocate – for the Respondent.

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

FINAL Oral Order No. A/838/2012-Ex(BL)

Per. Shri Rakesh Kumar :-

Respondents are manufacturers of FRP sleepers. During the period 17/3/2001 ~~and~~ to 25/4/2001 the respondents supplied two consignments of FRP sleepers to RDSO amounting to Rs.

8,53,600/- without payment of duty by availing full duty exemption under Notification No. 10/97-CE dated 1st March 1997. The clearances were made against certificates given by the RDSO certifying that the items are required for R&D purposes. The department was of the view that the items supplied are not covered by the Notification No. 10/97-CE and on this basis issued a show cause notice dated 26/27th February 2003 for recovery of unpaid duty alongwith interest and also for imposition of penalty. The show cause notice was adjudicated by the Assistant Commissioner vide order-in-original dated 31/5/04 by which the duty demand of Rs. 1,36,576/- was confirmed alongwith interest and beside this, penalty of equal amount was imposed under Section 11AC and another penalty of Rs. 15,000/- was imposed on the respondent under Rule 25 of Central Excise Rules, 2001. On appeal to Commissioner (Appeals), this order of the Assistant Commissioner was set aside vide order-in-appeal dated 29th October 2004, against which this appeal has been filed by the Revenue.

2. Heard both the sides.

3. Shri Amresh Jain, learned DR, has drawn our attention to the exemption Notification No. 10/97-CE dated 1/3/97 and submitted that the goods cleared by the appellant are FRP sleepers which do not fall within of the category of goods described in the notification. Learned DR further submits that the impugned order has also ignored the fact that the proper requisite certificate from the purchaser was not furnished by the

appellant at the time of clearance of goods and also even if the FRP sleepers are taken to be proto types, the value exceeded far above the limit of Rs. 50,000/- provided in the notification. Thus, learned DR has strongly urges us to set aside the impugned order and restore the order-in-original.

4. Shri B.L. Narasimhan, Advocate, on the contrary has contended that FRP sleepers are highly technical items which are used in building of railway tracks and any technical infirmity in those sleepers may result in an accident causing huge loss of life and property. Learned Shri B.L. Narasimhan, further submitted that the appellant had innocently supplied the goods, in question, believing the representation by the purchaser i.e. RDSO, who claimed that the goods, in question, were covered under the Notification. Thus, it is contended that there is no infirmity in the impugned order. Learned Shri B.L. Narasimhan further submitted that otherwise also the appeal is liable to be ~~dismiss~~ dismissed for the reason that the demand vide show cause notice dated 26-27/2/03 for recovery of duty for period from 17/3/01 to 25/4/01 is barred by limitation. He also submits that requisite certificates were submitted to the Department alongwith the information regarding intention to supply goods ~~for~~ at nil rate of excise duty.

5. We have considered the rival submissions and perused the records.

6. We find that in this case, show cause notice for demanding the short paid duty for the period from 17/3/01 to 25/4/01 has

been issued on 26-27/2/03 which would survive only if the longer limitation period under proviso to Section 11A (1) is applicable. In this case, as mentioned in para 9 in show cause notice, the respondent had furnished the necessary information to the Jurisdictional Range Superintendent intimating him that they would be clearing goods at nil rate of duty under Notification No. 10/87-CE to RDSO against the certificates issued by RDSO. Moreover, supplies of the goods had been made to a Government Institution without payment of duty against a written communication from the Institute that the goods are fully exempt from duty under Notification No. 10/87-CE and the requisite certificates regarding their use for R&D purpose had also been issued. In view of this, the department cannot allege fraud, wilful misstatement, suppression of fact, etc. on the part of the appellant. We are, therefore, satisfied that the allegation of wilful misstatement, suppression of fact etc cannot be made against the respondent, and as such, longer limitation period under proviso to Section 11A (1) is not invokable. The duty demand in this case is, therefore, time barred, and there is no infirming in the impugned order. The Revenue's appeal is dismissed.

(Dictated and pronounced in the open court)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK