

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
 38, MG Marg Civil Lines, Old Red Building, Allahabad-211001
 Regional Branch, Allahabad

Dated: 26/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71158/2016-SM[BR] dated 11/11/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.


 Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/598/2010 E/598/2010	THE OBEROI AMARVILAS , (MUMTAZ HOTELS LTD.), TAJ EAST GATE, AGRA.
		Name and Address of Respondent
2		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Copy To

Advocate(s) / Consultant(s):

HEMANT JAJODIA CA
 BENGAL INTELLIGENT
 PARK, BUILDING ALPHA, 1ST
 FLOOR, BLOCK EP&GP, SECTOR
 V, KOLKATA, 700091

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vanthiyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

12 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. Ltd.(taxmanagementindia.com).FF-19.1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File


 Asstt. Registrar

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2**

APPEAL No. E/598/2010-EX[SM]

(Arising out of Order-in-Appeal No. 353-CE/APPL/KNP/2009 dated 15/12/2009 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

For approval and signature:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s The Oberoi Amarvilas

Appellant

Vs.

Commissioner of Central Excise, Kanpur

Respondent

Appearance:

Shri Hemand Jajodia, Chartered Accountant,
Shri Rajeev Ranjan, Joint Commissioner (AR),

for Appellant
for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 11/11/2016

FINAL ORDER NO...71158/2016.....



Per: Anil G. Shakkarwar

The Present Appeal is filed by the appellant, M/s The Oberoi Amarvilas, against Order-in-Appeal No. 353-CE/APPL/KNP/2009 dated 15/12/2009 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.

2. Heard the ld. Consultant for the appellant. He has submitted that the appellant were issued with a Show Cause Notice dated 09/07/2008, wherein there was a proposal for demand of Central Excise duty of Rs.4,02,736/- and a proposal to appropriate equal amount deposited by appellant. There was a proposal to order the appellant to pay interest and impose penalty equal to the duty under Section 11AC of Central Excise Act, 1944. The said Show Cause Notice was adjudicated through Order-in-Original No. 217/DC/Adj/2009 dated 20/08/2009, wherein the Original Authority confirmed the demand and appropriated the duty already paid and ordered to the appellant to pay interest and impose penalty of Rs. 4,02,736/- being equal to the duty confirmed under Section 11AC of Central Excise Act, 1944. The appellants preferred appeal before Commissioner (Appeals). They have submitted before the ld. Commissioner (Appeals) that the Original Authority has failed to appropriate amount of Rs.1,27,321/- deposited by them against un-quantified demand of interest and they have already paid penalty of Rs.1,00,671/-. The ld. Commissioner (Appeals) decided the

appeal through Order-in-Appeal No. 353-CE/APPL/KNP/2009 dated 15/12/2009 wherein the Id. Commissioner (Appeals) rejected their appeal. Aggrieved by the said Order-in-Appeal the appellant has preferred the appeal before this Tribunal. He has further urged that the appellant had paid penalty of Rs.1,00,671/- which is equivalent to the 25% duty confirmed and intimated the same before the Jurisdictional Assistant Commissioner through letter dated 08/08/2008 before issue of Order-in-Original. He has also urged that they had submitted before the First Appellate Authority that the required duty was also deposited by them before adjudication by Original Authority.

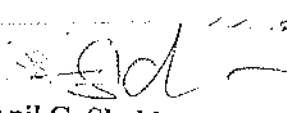
3. The Id. D.R. has supported the impugned Order-in-Original.

4. Having considered the rival contentions, I find that the appellant has paid the entire amount of duty and penalty as demanded in the impugned Show Cause Notice. Further, the appellant has paid 25% of the penalty imposed under Section 11AC of Central Excise Act, 1944 before adjudication. I find that as provided under Section 11AC of Central Excise Act, 1944, during the material period that if penalty imposed is paid within thirty days of such ^{imposition} ~~imports~~ then ^{and there} the penalty stands reduced to 25% the entire payable penalty has been paid by the appellant. Since, the duty, interest and penalty are already paid. I hold that the proceedings initiated through said Show Cause Notice dated 09/07/2008 are concluded. In

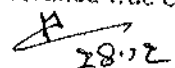
above terms the appeal is allowed and appellant will be entitled to consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

Ansari

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 (Anil G. Shakkarwar)
 Member (Technical)

प्रमाणित प्रतः / Certified True Copy

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 सहायक पंजीकार / Asstt. Registrar
 सीमाशुल्क, अपवादशुल्क एवं सेवा कर
 अधीन अधिकरण / (C.S.S.T.A.N.)
 38, एम. जी. मार्ग, अलाहाबाद-211001
 38, M. G. MARG, ALLAHABAD-211001

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