TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/4877/2004-4879/2004 Date 23/07/2008

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

To :
M/S A.K. SPINTEX LTD.
14 K.M. STONE, CHITTOR ROAD, BHILWARA - 311001

M/S A.K. SPINTEX LTD. Appellant
Vs
C.C.E. JAIPUR-II Respondent

I am directed to transmit herewith a certified copy of **Final order No**.493-495/2008- Excise dated 18-7-08
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. JAIPUR-II
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. - Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
3. C.D.R.

5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

16. M/S L.P. KALYA, DIRECTOR OF M/S A.K. SPINTEX LTD.
14 K.M. STONE, CHITTOR ROAD, BHILWARA
17. SHRI K.B. MATHUR, EMPLOYEE OF M/S A.K. SPINTEX LTD
14, K.M STONE, CHITTOR ROAD, BHILWARA

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi-110066

Court No.III

Date of hearing: 17.7.2008

Central Excise Appeal Nos.4877 to 4879 of 2004

Arising out of the Order in appeal No.383-385 (RM)CE/JPR-II/2004 dated 5.7.2004 passed by the Commissioner (Appeals II), Central Excise, Jaipur..

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, 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 should be released under Rule 27 of 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

Appellants | Respondent

M/s A.K. Spintex Ltd. vs. C.C.E.,
Shri L.P. Kalya, Director Jaipur
Shri K.B. Mathur

Appearance:

Shri H. Bajaj, Advocate for the appellants and
Shri H.K. Thakur, Authorized Departmental Representative (Jt.CDR) for the Revenue

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 493-495/08-EX

Per Archana Wadhwa:

The appellant M/s A.K. Spintex Ltd. is engaged in the manufacture of PMMF falling under Chapter 55 of Central Excise Tariff , 1985. Their factory was visited by the Central Excise Officers and a truck was found parked near the main gate loaded with finished goods. No duty paying documents were available with the driver. Accordingly, further search was made and various incriminating documents including excise book, invoice book with torn / missing pages were recovered. The statements of various persons including the statement of the Director were recorded wherein they admitted that duplicate invoice book was being used by them for removal of the goods without payment of duty. They also revealed the modus operandi being adopted by them to evade duty.

2. On the above basis, proceedings were initiated for confirmation of demand of duty and for imposition of penalty, which resulted in passing of an order by the original adjudicating authority confirming duty of Rs.5,21,814/- and imposing penalty of identical amount on the said manufacturing unit along with imposition of personal penalty of Rs.10,000/- each on the other two appellants, who are Director and grey in-charge of the company. The said order was confirmed by the Commissioner (Appeals).

3. After going through the impugned order, we find that the findings on clandestine removal are based upon tangible and positive evidence, which do not stand rebutted effectively by the appellants. Accordingly, we confirm the demand of duty of Rs.5,21,814/- against M/s .A.K. Spintex Ltd. However, by considering the appellants' contention that an amount of Rs.5 lakhs was deposited before issuance of show cause notice, we reduce the penalty on the said appellant to 25% of the duty deposited prior to the show cause

notice, in terms of the Hon'ble Delhi High Court decision in the case of C.C.E. vs. Malbro Appliances Ltd. – 2007 (79) RLT 109 (Del.). In addition, penalty to the extent of 100% of the duty deposited subsequent to the passing of the order is confirmed. However, penalty on the other two appellants are set aside. The appeals are disposed of in the above manner.

(Pronounced in the open Court)

18/7/08
(Archana Wadhwa)
Member (Judicial)

18/7/08
(M. Veeraiyan)
Member (Technical)

scd/