

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

Appeal No. E/3865/2005-3866/2005-SM[BR]

Date 07/01/2008

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

To :
M/S PRESTRESS INDIA CORPORATION
D-8, INDUSTRIAL AREA NAINI, ALLAHABAD

2.MR. ANIL KAHOL MANAGING PARTNER
M/S PRESTRESS INDIA CORPORATION
D-8, INDUSTRIAL AREA NAINI, ALLAHABAD

M/S PRESTRESS INDIA CORPORATION

Appellant

Vs

Respondent

THE COMMISSIONER OF CENTRAL EXCISE
ALLAHABAD

I am directed to transmit herewith a certified copy of Final order No. 4-5/2008-SM[BR] dated 28.11.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF CENTRAL EXCISE
ALLAHABAD
38, M.G.MARG, ALLAHABAD (U.P.)


2. Adv. / Consult SHRI, ATUL GUPTA CO. SECY.

B-1/1289-A, VASANT KUNJ NEW DELHI-110070

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(Customs Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise Appeal No. 3865-3866 of 2005 –SM (BR)

[Arising out of Order-in-Appeal No. 94-95/CE/Alld/2005 dated 29.9.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Allahabad].

Date of Hearing/decision: 28.11.2007

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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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. | : | |
| 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? | : | |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | |
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M/s Prestress India Corporation
Mr. Anil Kahol, Managing Partner

Appellant

Vs.

CCE, Allahabad

Respondent

Appearance:

Mr. Atul Gupta, Co. Secy. for the appellant.

Mr. S.L. Meena, Authorized Representative (DR) for the respondent

CORAM: Mr. P.K. Das, Member (Judicial)

Final **ORDER** No. 4-5/08-SM (BR)

Per P.K. Das:

The appellants filed this appeal against the imposition of penalty under Section 11AC of the Central Excise Act, 1944 upon the appellant firm and penalty

under Rule 209A of the erstwhile Central Excise Rules, 1944 upon the Managing Partner of the appellant firm.

2. The relevant facts of the case in brief are that the appellants are engaged in the manufacture of PCC poles. The Central Excise Officers during checking of record on 20.02.99 recovered some records. It reveals from the said record that the production and clearance recorded in their statutory records ^{was} ~~was~~ not tallied with the actual production and clearance as recorded in their private records. The appellant No. 2, the Managing Partner of the appellant firm admitted the maintenance of private record but expressed his ignorance as it was written by their ex-employee Shri R.K. Sharma.

3. The learned Advocate on behalf of the appellants submits that the Managing Partner of the appellant firm have no knowledge of maintenance of private record. However, in order to avoid legal complexity the appellant deposited the duty before issue of show cause notice. He further submits that there is no evidence of clandestine removal of the goods and therefore, imposition of penalty under Section 11AC of the Act is unjustified. He further submits that the Hon'ble Rajasthan High Court in the case of CCE, Jaipur vs. Banswara Syntex Limited reported in 2007 (212) ELT 171 (Raj.) held that the imposition of penalty under Section 11AC of Central Excise Act, 1944 is discretionary power of the authority. He further submits that the Hon'ble Bombay High Court in the case of Commissioner of Customs (E.P.) vs. Jupiter Exports reported in 2007 (213) ELT 641 (Bom.) held that when partnership firm is penalized, separate penalties cannot be imposed on partners.

4. Learned authorized representative (DR) on behalf of the Revenue submits that it is a case of clandestine removal of the goods and therefore imposition of penalty under Section 11AC is justified. He submits that buyers confirmed the excess removal of the goods. The case law cited by the applicant is not applicable herein. The learned DR relied upon the larger bench decision of the Tribunal in

the case of CCE, Delhi-IV vs. Ilpea Paramount Pvt. Ltd., reported in 2007 (213) ELT 500 (Tri.LB).

5 After hearing both sides and on perusal of the record, I find that it is revealed from the record that the appellants cleared the goods without payment of duty which was accepted by the customer. The appellant blamed their ex-employee regarding the maintenance of the private records. It appears that the appellant suppressed the production and clearance of the goods with intent to evade payment of duty and therefore Section 11AC of Central Excise Act, 1944 would be invoked. Learned Advocate submitted that the appellant deposited the entire amount of duty before issue of the show cause notice. The Hon'ble Rajasthan High Court in the case of Banswara Syntex Limited (supra) held that in such situation penalty under Section 11AC of the Act is reduceable to 25% of the amount of duty. Accordingly, the penalty imposed upon the appellant No. 1 is reduced to Rs. 1,75,000/-. So, the appeal of the appellant No. 1 is disposed of in the above term. The Hon'ble Bombay High Court in the case of Jupiter Exports (supra) held that when partnership firm is penalized, separate penalties cannot be imposed on partners and therefore, the penalty on appellant No. 1 is set-aside and the appeal is allowed.

[Order dictated & pronounced in open court]

(P.K. Das)
Member (Judicial)

[Pant]