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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/253 /2006-SM[BR] Date 16/01/2008

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

To :
CCE,KANPUR
117/7,SARVODAYA NAGAR,KANPUR

CCE,KANPUR Appellant
Vs
M/S SHRI RAM DIESELS INDIA Respondent

I am directed to transmit herewith a certified copy of Final order No. 94/2008-SM[BR] dated 12.12.2007 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S SHRI RAM DIESELS INDIA
   C-65/66,FOUNDRY NAGAR,AGRA.
2. Adv. / Consult
   NONE--

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 Publictions (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
(SM 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. 253 of 2006 -SM (BR)

[Arising out of order in appeal No. 316-CE/APPL/Knp/2005 dated 31.08.2005 passed by the Commissioner (Appeals) Customs & Central Excise, Kanpur]

Date of Hearing/ Decision: 12.12.2007

For approval and signature:
Hon'ble Mr. P.K. Das, Member (Judicial)

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? : N
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

CCE, Kanpur — Respondent
[Rep. by Mr. S.L. Meena, Authorised Representative (DR) for the Appellant]

Vs.

M/s Shri Ram Diesels (India) — Appellant
[None]

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

Final **ORDER** No. 94/08-SM(BR)

Per P.K. Das:

Heard the learned DR on behalf of the Revenue. The respondent filed written submission and requested to decide the matter in their absence. After hearing the learned DR and on perusal of the records, it is seen that the Central Excise Officers during the stock verification detected shortage of inputs and the respondent immediately reversed the credit of Rs. 20,080/-. The adjudicating authority imposed penalty of Rs. 10,000/- under rule 13 of Cenvat Credit Rules, 2002 for contravention of the rules. The appellant filed the appeal before the Commissioner (Appeals). By the impugned order, Commissioner (Appeals) reduced the penalty from Rs.10,000/- to Rs. 5,000/-. The contention of learned DR is that Rule 13 of Cenvat Credit Rules, 2002 provides minimum penalty of Rs. 10,000/- and therefore, Commissioner (Appeals) is not justified to reduce the penalty. He relied upon the decision in the case of **CCE, Lucknow vs. Sarjoo Sahkari Chini Mills Ltd., reported in 2006 (204) ELT 478 (Tri. Del.).**

2. It is seen from the impugned order that Commissioner (Appeals) observed that there is contravention of the rules and therefore complete waiver of penalty cannot be considered since the respondent reversed the credit after detection by the Central Excise officer. The respondent in the written submission relied upon the decisions which are related to Section 11AC of the Central Excise Act 1944. I agree with the contention of the learned DR that Rule 13 provides the minimum penalty of Rs. 10,000/-. Therefore, the reduction of penalty by the Commissioner (Appeals) is contrary to the provision of Rule 13 of the Cenvat Credit Rules, 2002. Accordingly, the order of the Commissioner (Appeals) is set-aside and the order of the adjudicating authority is restored. The appeal filed by the Revenue is allowed.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]