

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/2525/2005

Date 25/01/2008

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

To :
KRISHNA TOYS LTD.
PLOT NO. 57, PHASE-IV, UDYOG VIHAR, GURGAON,
HARYANA

KRISHNA TOYS LTD.

C.C.E. DELHI III

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 171/2008 SM[BR] dated 1.1.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ,
PHASE V, GURGAON - 122016 (HARYANA)

2. Adv. / Consult

MR.D.N. MALHOTRA

18, SHIVPURI, SAINT MICHEAL, HIGH SCHOOL ROAD, GURGAON-122001.

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
(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. 2525 of 2005 –SM (BR)

[Arising out of Order-in-Appeal No.213/AKG/GGN/2005 dated 20.4.2005 passed
by the Commissioner of Central Excise (Appeals), Gurgaon]

Date of Hearing/decision: 1.1.08

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? | : | }
<i>Y.S.</i> |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : | |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | |
-

M/s. Krishna Toys Ltd.

Appellants

Vs.

CCE, Delhi-III

respondent

Appearance:

None for the appellant.

Shri A.K. Rastogi, Authorised Departmental Representative (SDR) for the respondent.

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

Final ORDER No 171/08-IM(BM)

Per P.K. Das:

None appeared on behalf of the appellant. Heard the ld. DR on behalf of the Revenue and perused the records.

2. The relevant facts of the case, in brief, are that on 30.12.2002, a theft/burglary took place in the factory premises of the appellants. The appellant requested for remission of duty under Rule 21 of the Central Excise Rules, 2002 on the stolen goods, which have been rejected by the competent authority. A show cause notice was issued proposing demand of duty on the stolen goods. The appellant deposited the duty to close the matter before passing of the adjudication order. So, the adjudicating authority appropriated the amount deposited by them and also directed to pay the interest under Section 11 AB of the Central Excise Act, 1944. The Commissioner (Appeals) rejected the appeal of the appellant and observed that although this may not be the intention but fact remains that the goods have been removed from the factory without payment of duty. It is evident from the record that the demand of duty was proposed on stolen goods. It is noted that there is a contrary decision of the Tribunal as to whether

● remission of duty under Rule 21 of Central Excise Rules, 2004, is applicable on stolen/theft goods. It is revealed from the records as well as from the findings of the Commissioner (Appeals) that there is no fraud, suppression of facts, etc. The Division Bench of the Tribunal, in the case of Commissioner of Central Excise Vs. K.E.C. International Ltd. – 2002 (144) ELT 367 (T-Delhi) held that interest under Section 11 AB of the Central Excise Act, 1944 is attracted only in cases involving fraud, suppression of facts, etc. In the instant case, there is no material of fraud, suppression of facts, etc. and therefore, recovery of interest under Section 11 AB of the Central Excise Act, 1944 is not sustainable. Accordingly, the impugned order insofar as the recovery of interest under Section 11 AB of Central Excise Act, 1944 is set aside. The appeal is allowed.

Order dictated & pronounced in open court on 1.1.2008.

(P.K. Das)
Member (Judicial)

Ckp.