

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/465 /2006-SM[BR]

Date 18/02/2008

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

To :
CCE,ALLAHABAD(UP)
38,M.G.MARG,CIVIL LINES, ALLAHABAD,(UP)

CCE,ALLAHABAD(UP)

M/S DISHA PACKAGING P LTD.

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 298/2008-SM[BR] dated 24.1.2008
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S DISHA PACKAGING P LTD.

GIDA,GORAKHPUR(UP)

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 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.465 of 2006-SM (BR)

[Arising out of order in appeal No.121-CE/ALLD/2005 dated 20.12.2005 passed by the Commissioner of Central Excise (Appeals), Allahabad (U.P.)]

Date of Hearing/ Decision:24.1.2008

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? | : | M |
| 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, Allahabad (U.P.)

...Appellants
[Rep. by Mr. S.L. Meena, SDR]

Vs.

M/s. Disha Packaging P. Ltd.

Respondent
[Rep. by None]

CORAM: **Mr. P.K. Das, Member (Judicial)**
Final Order No. 298/68-SM/Dated:24.1.2008
(BR)

Per P.K. Das:

Heard the Id. DR on behalf of the Revenue. None appeared on behalf of the respondent. By letter dated 10.11.2007, the respondent requested to decide the matter on merits in their absence.

2. The Revenue filed this appeal against the order of the Commissioner (Appeals), whereby penalty was reduced from Rs.12,933/- to Rs.4,000/- (Rupees Four Thousand only).

3. After hearing the Id. DR and on perusal of the records, I find that the adjudicating authority imposed penalty of equal amount of duty under Rule 13 of Cenvat Credit Rules, 2004 read with Rule 25 of the Central Excise Rules, 2002. The adjudicating authority observed that the penalty is impossible for contravention of the Rules. The Commissioner (Appeals) observed that the adjudicating authority had imposed penalty of equal amount of duty, which appears much exorbitant.

4. Ld. DR submits that Rule provides minimum penalty of Rs.10,000/-. He also relied upon the decision of the Tribunal as reported in 2007 (214) ELT 296. I find force in the submissions of the Id. DR. Rule 25 of the Central Excise Rules provides penalty shall be liable not exceeding the amount of duty on the excisable goods or rupees ten thousand, whichever is greater. Therefore, the minimum penalty of Rs.10,000/- is impossible.

Accordingly, the impugned order is modified and the penalty is enhanced from Rs.4,000/- to Rs.10,000/- (Rupees Ten thousand only). The Revenue's appeal is allowed in the above terms.

Order dictated & pronounced in open court on 24.1.2008.

(P.K. Das)
Member (Judicial)

Ckp.