

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

Date 26/02/2008

Appeal No. E/1829/2006-1830/2006-SM[BR]

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

To :  
HINDUSTAN POLYESTER LINES, (REWARI) [2]MD. AMIN GENERAL PARTNE  
C/O ARFAT PETROCHEMICALS PVT. LTD. ARFAT C/O M/S HINDUSTAN POLYESTER LINES;-----  
NAGAR, KOTA  
324003

HINDUSTAN POLYESTER LINES, (REWARI)

Appellant  
Vs  
Respondent

C.C.E. DELHI III

I am directed to transmit herewith a certified copy of Final order No.348-349 /2008 -SM[BR] dated 25.1.2008  
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.S.C. KAMRA & CO.

B-2/210(BASEMENT), SAFDARJUNG ENCLAVE, NEW DELHI- 110029

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 & SERVICE TAX  
APPELLATE TRIBUNAL**  
West Block No. 2, R.K. Puram, New Delhi – 110 066.  
Principal Bench, New Delhi

**COURT NO. III**

**Excise Appeal No. 1829-1830 of 2006 – SM (BR)**

[Arising out of the Order-in-Appeal No. 41-42/GRM/GGN/2006 dated 31/01/2006 passed by The Commissioner of Central Excise (Appeals), Delhi – III, Gurgaon.]

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 would 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 Department Authorities? :

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1) M/s Hindustan Polyester Lines	]	Appellant
2) Md. Amin General, Partner of the firm	]	

Versus

CCE, Delhi – III

Respondent

**Appearance**

Shri S.K. Kamra, Advocate – for the appellant.

Shri S.L. Meena, Authorized Representative (SDR) – for the Respondent.

CORAM : Hon'ble Shri P.K. Das, Member (Judicial)

**DATE OF HEARING : 25/01/2008.**

Final Order No. 348-349/08-SM(BR) Dated : 25-1-08

**Per. P.K. Das :-**

Heard both sides and perused the records.

2. The appellants are engaged in the manufacture of Polyester Filament Yarn and Polyester Chips classified under sub-heading No. 5402.42 and 3907.60 of the schedule to the Central Excise Tariff Act, 1985. On 12<sup>th</sup> December 2003, the Central Excise officers visited the appellant's factory and verified the stocks. The said officers detected shortage of finished goods. The representative of the appellant in his statement on the spot stated that it could be due to clerical mistake and also deposited the duty on shortage. A show cause notice dated 7<sup>th</sup> October 2004 was issued proposing demand of duty and to appropriate the amount as deposited by them and also to impose penalty under Rule 25 of Central Excise Rules 2002 for contravention of various provisions of

Central Excise Act 1944 and Rules thereunder. It has also proposed to impose penalty on the partner of the appellant's firm. The Adjudicating Authority confirmed the demand of duty of Rs. 1,10,854.00 and imposed penalty of equal amount upon appellant's firm and also imposed a personal penalty of Rs. 25,000.00 on the partner. The Commissioner (Appeals) upheld the adjudication order.

3. After hearing both the sides and on perusal of the records, I find that the shortage was detected during stock verification and the appellant deposited the duty immediately after detection. It has also clarified that the shortage is due to clerical mistake. Therefore, the submission of the learned advocate that stock taking was not conducted in proper manner, is not justified. It is noted that the appellant deposited the duty without any protest and therefore there is no substance in the submission of the learned advocate in respect of demand of duty. However, I find force in the submission of the learned advocate in respect of imposition of penalty. It is seen that the appellant paid the duty upon detection of the shortage before issue of show cause notice. There is no evidence of clandestine removal of the goods. The learned

advocate relied upon the decision of the Tribunal in the case of **CCE, Jaipur-I vs. Lucky Plast Ltd.** reported in **2007 (81) RLT 492 (CESTAT-Del.)** on this issue. Accordingly, the penalty imposed on the appellant under Rule 25 of the Central Excise Rules 2002 and the penalty on the appellant No. 2 are set aside. The appeals are disposed of in the above term with consequential relief.

(Dictated and pronounced in open court)

**(P.K. Das)**  
**Member (Judicial)**

PK