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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/2809/2006-SM[BR] Date 28/02/2008

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

To :
C.C.E.RAIPUR
CENTRAL EXCISE BUILDING,DHAMTARI
ROAD,TIKRAPARA,RAIPUR

C.C.E.RAIPUR Appellant
Vs
M/S GANPATI INDUSTRIAL PVT LTD Respondent

I am directed to transmit herewith a certified copy of Final order No. 359 /2008 –SM[BR] dated 21.2.2008 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 GANPATI INDUSTRIAL PVT LTD
   PLOT NO 65-66,SECTOR-C,URLA INDUSTRIAL
   AREA,RAIPUR(CG)
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.2809 of 2006 -SM (BR)

[Arising out of order in appeal No.115/RPR-I/2006 dated 20.06.2006 passed by the Commissioner (Appeals), Central Excise, Raipur]

Date of Hearing/ Decision:21.2.2008

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?	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?	:

CCE, Raipur

[Rep. by Mr. B. S. Suhag, DR for the appellant]

Vs.

M/s. Ganpati Industrial Pvt. Ltd. — Respondent
[Rep. by None.]

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

Final **ORDER** No. 359/08-SM(BR)

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby penalty was reduced to Rs.50,000/-.

2. Heard the ld. DR on behalf of the Revenue. None appeared on behalf of the respondent.

3. After hearing the ld. DR on behalf of the Revenue and on perusal of the records, I find that there was charge of clandestine removal of the goods. The appellant deposited the entire amount of duty before issue of show cause notice. The adjudicating authority appropriated the entire amount of duty as deposited by the respondent. He has also imposed penalty of equal amount of duty under Section 11 AC of the Central Excise Act. The Commissioner (Appeals) reduced the penalty. I find that the Hon'ble Delhi High Court in the case of Commissioner of Central Excise Vs. Malero Appliances Pvt. Ltd. Reported in 2007 (208) ELT 503 (Delhi) held that the imposition of penalty under Section 11 AC of the Act is discretionary power. In any case, the respondent deposited the entire amount of duty before issue of the show cause notice and the Commissioner (Appeals) reduced the penalty amount, which is more than 25% of the amount of duty. So, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 21.2.2008.

(P.K. Das)
Member (Judicial)

Ckp.