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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/177 /2007-178 /2007 - SM[BR] Date 10/09/2008

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

To :
C.C.E.KANPUR
117/7, SARVODAYA NAGAR, KANPUR.

C.C.E.KANPUR Appellant
Vs
M/S PARAGON INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1298-1299 / 2008 SM[BR]** dated 21.8.2008 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 PARAGON INDUSTRIES
   D-7, FOUNDRY NAGAR, AGRA
2. Adv. / Consult SHRI, K.K. ANAND ADV.
   A -5, [BASMENT] LAJPAT NAGAR –III NEW DELHI-24.

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

2. SH ALOKE KUMAR,PROPRIETOR
M/S PARAGON INDUSTRIES, D-7, FOUNDRY NAGAR,
AGRA.

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 177-178 of 2007-SM

[Arising out of Order-in-Appeal No. 526-CE/APPL/KNP/06 dated 19.10.06 passed by the Commissioner (Appeals), Kanpur.]

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? : 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? : Yes

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Commissioner of Central Excise Kanpur — Appellant

Vs.

M/s. Paragon Industries Shri Aloke Kumar, Proprietor — Respondent

Appearance: Mr. Sansar Chand, DR for the Appellant
Mr. Hemant Bajaj, Advocate for the Respondent

Date of decision : 21.8.2008

Final **ORDER NO.** 1298-1299/08-SM(BR)

Per P.K.Das (for the Bench):

The relevant facts of the case, in brief, are that the respondent No. 1 is a proprietorship concern engaged in the manufacture of spring leaves classifiable under sub-heading No. 7320.00 of the schedule to the Central Excise Tariff Act, 1985. On 14.11.05, the Central Excise officers visited their factory and ascertained shortage of finished goods against the recorded ~~rewarded~~ balance of RGI register. Shri Aloke Kumar, Proprietor admitted the shortage and stated that the goods were cleared without payment of duty and immediately deposited the entire amount of duty of Rs. 77,034/-. The adjudicating authority confirmed the demand of duty and appropriated the said amount as already deposited by the respondents and also imposed a penalty of equal amount under section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002 on the respondent No. 1. He also imposed a penalty of Rs.25,000/- on the respondent No. 2 proprietor of the respondent No. 1. Commissioner (Appeals) set aside the penalties. Hence the Revenue filed these appeals.

2. After hearing both the sides and on perusal of the records, I find that the Respondent 2, proprietor of the firm admitted the shortage and

accepted the goods were cleared without payment of duty. So it is a case of clandestine removal of the goods. Penalty under section 11AC of the Act is justified. The learned advocate placed reliance on the decision of the Hon'ble Delhi High Court in the case of CCE vs. Malbro Appliances P.Ltd. [2007 (208) ELT 503 (Del)] held that first proviso to section 11AC of the Act provided for penalty of 25% if duty demanded is paid within 30 days of the order. In the present case, the respondent No. 1 deposited the duty before issue of show cause notice and therefore, penalty is imposable @ 25% of duty i.e. Rs.19,000/-.

3. Regarding penalty on the respondent No. 2, it is settled law that penalty cannot be imposed on the proprietor and proprietorship firm as both are same. In view of that, penalty on the respondent No.2 is not sustainable. Accordingly, the appeal filed against the respondent No. 2 is rejected. The appeal filed against the respondent No.1 is disposed of in the above terms.

(Pronounced in the open Court)

(P.K.Das)
Member(Judicial)

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