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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/3896/2006 - SM

Date 29/09/2008

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 SERVICE SHOES — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1328 / 2008- **SM[BR]** dated 3.9.2008 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 SERVICE SHOES
   IST FLOOR, 7/52-A, BYE PASS ROAD, NAGALA JAWAHAR, AGRA, UP
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,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 - 3
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
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-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.3896 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.440-CE/APPL/KNP/2006 dated 13.09.2006 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:03.09.08

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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? :
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

No.

CCE, Kanpur ...Appellants

[Rep. by Shri K.K. Goyal, Jt.CDR]

Vs.

M/s. Service Shoes ...Respondent

[Rep. by Ms. Asmita Nayak, Advocate]

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

Final Order No.1328/08-SM(BR)/Dated:03.09.2008

Per P.K. Das:

The Central Excise Officers visited the Respondent's factory on 24.07.2004 and detected shortage of 655 pairs of shoes. The Anand

Kishan Chopra, Authorised Signatory admitted the shortage and deposited the duty immediately. The Adjudicating Authority confirmed the demand of duty of Rs.1,02,566.00 and appropriated the said amount as deposited by them. He also imposed penalty of equal amount under Section 11 AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002 separately. The Commissioner (Appeals) set aside the penalties as the Respondent deposited the duty before issue of show cause notice. Hence, Revenue filed this appeal.

2. After hearing both the sides and on perusal of the records, I find that Shri Anand Kishan Chopra admitted that the goods were cleared by their staff under the cover of challans without issue of central excise invoices and without payment of duty.

3. The ld. Advocate submits that the Authorised Signatory was out of town and the illiterate workers removed the goods without his knowledge. The plea taken by the ld. Advocate is not acceptable. It is a clear case of clandestine removal of the goods and, therefore, penalty under Section 11 AC of the Act is warranted. The Hon'ble Delhi High Court in the case of CCE Vs. Malbro Appliances P. Ltd. reported in 2007 (208) ELT 503 held that First Proviso to Section 11 AC of the Act providing for penalty of 25% if duty determined paid within 30 days of order. In the present case, the Respondent deposited the duty before issue of show cause notice. So, the penalty is imposable to 25% of duty

(Rs.26,000/-). The Tribunal in the case of Kamlesh Kumar Goel Vs. CCE, Thane-II reported in 2008 (223) ELT 65 (T-M) held that penalty cannot be imposed under both the sections. In view of that, penalty under Rule 25 of the Rules is set aside. The order of the Commissioner (Appeals) is set aside and the order of the Adjudicating Authority is modified in so far as penalty under Section 11 AC is reduced to Rs.26,000/- (Rupees Twenty Six Thousand only) and penalty under Rule 25 of the Rules is set aside. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 3.09.08.

(P.K. Das)
Member (Judicial)

Ckp.