

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/388 /2007,392 /2007 – SM[BR]

Date 29/09/2008

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

To :
C.C.E. KANPUR

117/7, SARVODYA NAGAR, KANPUR

C.C.E. KANPUR

Appellant

Vs
Respondent

M/S MINERAL OIL CORP.

I am directed to transmit herewith a certified copy of **Final order No. 1339 – 1340 / 2008- SM[BR]** dated 16.9.2008

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 MINERAL OIL CORP.
2. SHRI VIKAS CHANDRA AGARWAL PARTNER
D-13, PANKI INDL. AREA, SITE-I, KANPUR & SHRI VIKAS CHANDRA AGARWAL, PARTNER OF THE UNIT, Kanpur
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. 46, Saket, New Delhi 110017
- 7 M/s Centax Publications (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), Thyagarava Road, T. Nagar, Chennai
- 13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, 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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K Puram, New Delhi-110066

COURT-IV

Date of hearing: 16.9.2008

E/Appeal No. 388 and 392/2007-SM(BR)

(Arising out of Order-in-Appeal No. 622/CE/APPL./KNP/2006 dated 22.12.2006 passed by the Commissioner (Appeals) Customs & Central Excise, 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?
 3. Whether Their Lordships wish to see the fair copy of the Order?
 4. Whether Order is to be circulated to the Departmental authorities?
-

no

yes

CCE Kanpur

Appellant/Applicant
(Rep. by Shri Sansar Chand, DR for the Appellant)
Vs.

1. M/s Mineral Oil Corpn. Respondent
2. Shri Vikas Chandra Agarwal, Partner (None for the Respondents)

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

Final Order No. 1339-1340/02-sm(DR)

Per: P.K. Das

Revenue filed these appeals against the order of the Commissioner (Appeals). Heard the Id. DR on behalf of the Revenue. None appeared on behalf of the Respondents inspite of issue of notice.

2. The relevant facts of this case ^{are} in brief that the Respondents are engaged in the manufacture of Transformer Oil, Spindle Oil, Lubricating Oil, Stearic Acid and Greases classifiable under sub-heading no. 2710.95, 2710.99 of the Schedule to the Central Excise Tariff Act, 1985. On 07.3.2005, the Central Excise Officers visited the Respondent's factory and conducted the stock verification, further, the said Officers ascertained shortage of finished goods and raw materials. The Respondent immediately deposited the duty of Rs.1,26,381.00. The Adjudicating Authority confirmed the demand of duty of Rs.1,26,381.00 and appropriated the said amount as deposited by them. He imposed penalty of Rs.10,000.00 and Rs.5,000.00 on Respondent No. 1 and 2 respectively. Revenue filed appeal before the Commissioner (Appeals) for enhancement of amount of penalty, which has been rejected. Hence, the Revenue filed these appeals.

3. After hearing the Id. DR and on perusal of the records, it is seen that the Respondent accepted the shortage and stated that the goods

were removed without payment of duty. So, it is a case of clandestine removal of goods, penalty under Section 11 AC of the Act is warranted. The Hon'ble Delhi High Court in the case of Commissioner of Central Excise Vs. Malbro Appliances P. Ltd reported in 2007 (208) ELT 503 (Del.) held that first proviso to Section 11 AC (1) of the Act providing penalty of 25% of duty, if duty is deposited within 30 days of the order. In the present case, the Respondent deposited the duty before issue of show cause notice and penalty is imposable of 25% of duty. Accordingly, the Adjudication Order in so far as imposition of penalty of the Respondent No. 1 is modified and it is enhanced from Rs.10,000.00 to Rs.31,000.00 (i.e. 25% of duty).

4. However, I find that there is no material available for imposition of penalty on Respondent No. 2 as he has stated that the goods were removed by staff in his absence. So, the appeal against the Respondent No. 2 is rejected. Appeal against Respondent No 1 is disposed of in the above terms.

(Dictated and pronounced in the open court).

(P.K. Das)
Member (Judicial)

K. Gupta