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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/213 /2007-214 /2007 – SM[BR]   Date 07/10/2008

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 KANPUR PLASTIPACK LTD   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1347 – 1348 / 2008 - **SM[BR]** dated 29.8.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

1. M/S KANPUR PLASTIPACK LT
2. , SHRI S.S. DAYAL,, GENERAL MANAGER
D-19 & 20, PANKI INDUSTRIAL AREA, SITE I, KANPUR

2. Adv. / Consult SHRI ASHTOSH AGARWAL ADV.
117 / 9 / M – BLOCK KAKADEO , KANPUR- 208019.

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
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Assistant Registrar
(SM Appeal Branch)

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

Appeals Nos.E/214 & 213/2007-SM (BR)

[Arising out of common Order-in-Appeal No.545-46-CE/APPL/KNP/2006 dated 19.10.2006 of the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:29.08.2008

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.		No
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

CCE, Kanpur ...Appellant

[Rep. by Shri Sansar Chand, DR]

Vs.

(1) M/s. Kanpur Plastipack Ltd.

(2) Shri S.S. Dayal , General Manager ...Respondents

[Rep. by Shri Ashutosh Agarwal, Advocate]

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

Final Order No. 1347-1348/08-SM(BR) /Dated:29.08.2008

Per P.K. Das :

Revenue filed these appeals against Order-in-Appeal No.545-546/CE/APPL/KNP/2006 dated 19.10.2006 passed by the Commissioner (Appeal) of Central Excise, Kanpur.

2. The Respondents are engaged in the manufacture of HDPE/PP Woven Fabric/Sacks Laminated or un-laminated, Printed and FIBC (Flexible Intermediate Bulk Container) falling under sub-headings 3923.90, 3926.90 under Chapter 30 of the Schedule to the Central Excise Tariff Act, 1985. On 24.06.2004, the Central Excise Officers visited the Respondent's factory and conducted stock verification. The said officers detected shortage of finished goods as well as inputs during the stock verification. Shri S.S. Dayal, General Manager accepted the shortage and stated that the goods were cleared without payment of duty. The Respondents deposited the entire amount of duty of Rs.1,75,204/- on 2.7.2004. The Adjudicating Authority confirmed the demand of duty and appropriated the amount as deposited by the Respondents. He also imposed penalty of equal amount of duty under Section 11AC of the Central Excise Act, 1944 and penalty of Rs.10,000/- under Rule 25 of the Central Excise Rules, 2002 on the Respondent No.1 and a penalty of Rs.10,000/- on the Respondent No.2. The Commissioner (Appeals) set aside the penalties. Hence the Revenue filed these appeals.

3. After hearing both the sides and on perusal of the records, it has been observed by the Commissioner (Appeals) that though clandestine

removal has been established, yet penalty is held as not imposable as duty involved is paid before the issue of show cause notice. The Hon'ble Delhi High Court in the case of KCP Pouches (P) Ltd. Vs. Union of India reported in 29008 (228) ELT 31 (Delhi) and Commissioner of Central Excise Vs. Malbro Appliances Pvt. Ltd. 2007 (208) ELT 0503 (Delhi) held that if the assessee admitted that the goods are cleared without payment of duty, Section 11 AC would be invoked. It is further been held that if the assessee deposited the duty within 30 days of receipt of the order, penalty is leviable to 25% of duty in terms of First Proviso to Section 11 AC (1) of the Act. In the present case, I find that the clandestine removal of the goods has been established. So, penalty under Section 11 AC is warranted. However, the Respondents already deposited the entire amount of duty before issue of show cause notice and, therefore, penalty is reduced to 25% of the duty amount (i.e Rs.45,000/-).

4. In view of that, the order of the Commissioner (Appeals) against Respondent No.1 is set aside. The order of the Adjudicating Authority is restored and be modified in so far as penalty under Section 11 AC of the Act is upheld and reduced to Rs.45,000/- and the penalty under Rule 25 is set aside.

5. Regarding imposition of penalty on the Respondent No.2, I do not find any material for imposition of penalty on the employee. It is noted that the Respondent No.2 is the General Manger of the Company and

cooperated with the officers during stock verification and deposited the duty immediately and, therefore, penalty is not sustainable. Accordingly, the appeal against Respondent No.1 is disposed of in the above terms. The appeal against Respondent No.2 is rejected.

Order dictated & pronounced in open court on 29.08.2008.

(P.K. Das)
Member (Judicial)

Ckp.