

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/716 /2007 – SM[BR]

Date 21/10/2008

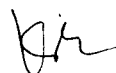
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E, KANPUR
117/7, SARVODAYA NAGAR, KANPUR-208005
C.C.E, KANPUR

Appellant
Vs
Respondent

SUPER SOLES PVT. LTD.

I am directed to transmit herewith a certified copy of Final order No. 1389 / 2008 - SM[BR] dated 7.10.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

SUPER SOLES PVT. LTD.

32/01/12, TAKLA LAL MASJID, BYE PASS ROAD, AGRA.

2. Adv. / Consult SHRI K.K.ANAND ADV.

A-5. BASEMENT LAJPAT NAGAR 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 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

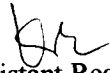
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagaraya Road, T. Nagar, Chennai

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
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.716/2007 -SM

(Arising out of order in appeal No.9/CE/APPL/KNP/2007 dated 24.1.2007
passed by the Commissioner of Central Excise (Appeals), Kanpur)

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 ?
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, Kanpur

Appellant
(Rep. by Shri Sansar Chand, DR)

Vs

M/s Super Sales Pvt Ltd

Respondent
(Rep. by Shri Hemant Bajaj, Advocate)

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

Date of Hearing: 7.10.08

Final Order No. 1389 /2008-SM(BR)

Per P.K. Das:

After hearing both the sides and on perusal of the record, it is seen that the Central Excise officers detected shortage of finished goods during stock verification. The respondents admitted the shortage and deposited the

entire amount of duty. The Adjudicating Authority confirmed demand of Rs.2,49,776/- and appropriated the said amount as deposited by them. He also imposed penalty of equal amount under Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002. The Commissioner (Appeals) set aside the penalty.

2. On perusal of the record, I find that the respondent admitted the clandestine removal of goods and therefore, penalty under Section 11AC of the Act is warranted. The Hon'ble Delhi High Court in the case of CCE Vs Malgro Appliances (P) Ltd reported in 2007 (208) ELT 503 (Del) held that First proviso to Section 11AC of Central Excise Act, 1944 providing for penalty of 25% of duty if the duty demanded paid within 30 days of the order. In the present case, the respondents deposited the duty before issue of show cause notice and therefore, penalty is imposable 25% of duty (i.e. Rs.62,500/-).

3. In view of that, order of the Commissioner (Appeals) is set aside and the adjudication order is modified in so far as penalty is reduced to Rs.62,500/- under Section 11AC of the Act. The appeal is disposed of.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)