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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/243 /2007 – SM[BR] Date 10/11/2008

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
M/S SHREE RAM LAMINATORS Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1419 / 2008- SM[BR]** dated 2.9.2008 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 SHREE RAM LAMINATORS
25-B, UDYOG NAGAR, KANPUR.
2. Adv. / Consult SHRI RAJESH CHHIBBER ADV.
FA-9, NEW KAVI NAGAR GHAZIBAD [U.P]

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)

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

COURT-IV

Date of hearing: 02.9.2008

Appeal No. E/243/2007-SM(BR)

(Arising out of Order-in-Appeal No. 552/CE/APPL/KNP/2006 dated 13.11.2006 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?

No

4. Whether Order is to be circulated to the Departmental authorities? Yes.

CCE, Kanpur — Appellant/Applicant
(Rep. by Shri R.K. Saini, DR)

Vs.

M/s Shree Ram Laminators — Respondent
(Rep. by Shri Rajesh Chhibber, Advocate)

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

Final Order No. 1419/08-SM(BR)

Per: P.K. Das

After hearing the ld. DR and on perusal of the records, it is seen that on 10.2.2005 the Central Excise Officers visited the Respondent factory and conducted stock verification. The said Officers detected shortage of raw materials and finished goods involving Central Excise duty of Rs. 1,12,138.00, which was paid by the Respondent immediately. The Adjudicating Authority confirmed the demand of duty Rs. 1,12,138.00 and appropriated and said amount as deposited by the Respondent. He has not imposed any penalty. Revenue filed appeal before the Commissioner (Appeals) for imposition of penalty under Section 11 AC of Central Excise Act, 1944, which was rejected. Hence, Revenue filed the present appeal.

2. On perusal of the records, I do not find any material of clandestine removal of the goods. There was shortage of raw material and finished goods during stock verification. The Respondent deposited the duty immediately upon the detection of shortage. The Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Rohtak Vs. S.B. Packaging Ltd. 2008 (223)RLT 360 (P&H) held that intention to evade payment of duty is required to be established under Section 11 AC of the Act. In this case, there is no material available that the respondent

clandestinely removal the goods. So, imposition of penalty under Section 11 AC of the Act is not warranted. I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Dictated and pronounced in the open court.)

(P.K. Das)
Member (Judicial)

K. Gupta